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IN THE CIRCUIT COURT OF THE SEVENTEENTH JUDICIAL CIRCUIT COURT  
IN AND FOR BROWARD COUNTY, FLORIDA

R. LEIGH McPHAIL,

Case Number: 08-60736 (25)

Plaintiff

vs.

CHILDNET, INC., a Florida  
not-for-Profit corporation,

Defendant.

**Plaintiff's Response to ChildNet,  
Inc.'s Motion for Summary  
Judgment and Memorandum of  
Law in Support of its Motion for  
Final Summary Judgment**

Plaintiff, Leigh McPhail, responds as follows to ChildNet, Inc.'s Motion for Summary Judgment and ChildNet, Inc.'s Memorandum of Law in Support of its Motion for Final Summary Judgment:

**Introduction and Summary**

This is a whistle-blower suit brought by a human-resources director, **First**, whose duties her non-profit employer diminished after she participated in an investigation that unmasked, among other things, falsification of construction invoices to the Department of Children and Families, and, **Second**, whom it eventually fired after she opposed, **One**, placing the state-funded corporation's group insurance business at a higher price through a brokerage represented by a board member's accounting client and, **Two**, junking a bought-and-paid-for computer program for a competitor's more expensive and lower performing product.



The governing law is a blend of the expansive anti-retaliation jurisprudence developed under Title VII of the Civil Rights Act of 1964 and Florida's stringent procedural limits on the granting of summary judgment.

### **Statement of the Facts**

ChildNet is a private, non-profit corporation funded by the Department of Children and Families to take care of foster children in Broward County. Deposition of Leigh McPhail,<sup>1</sup> at 43:2-12, 44:10-16. Its budget in January 2008 was \$67 million-\$68 million, 98-99 per cent of which came from the State as fees for services. Deposition of Emilio Benitez,<sup>2</sup> at 12:5-7. It had 430 employees. McPhail Depo, at 43:18-33. Because it received funding from DCF, ChildNet was subject to extensive regulations, with which Leigh McPhail became familiar as part of her duties as Director of Human Resources. Id. at 45:11-22.

Barbara Moss, ChildNet's chief operating officer, and Peter Balitsaris, its president and CEO, interviewed and hired Ms. McPhail as Director of Human Resources. McPhail Depo, at 28:21-30:17. Ms. McPhail's duties included, among other things, management of benefits, administration of the Human Resources Information System ("HRIS"), security, oversight, i.e.,

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<sup>1</sup>The cover page and relevant testimonial pages of the Deposition of Leigh McPhail ("McPhail Depo") are appended to this response as Attachment 1.

<sup>2</sup>The cover page and relevant testimonial pages of the Deposition of Emilio Benitez ("Benitez Depo") are appended to this response as Attachment 2.

receipt and investigation of allegations of wrongdoing,. Id. at 46:20-47:2, 47:10-20, 66:22-67:8, 106:15-21, 232:14-18.

An investigation that would lead to the termination of Mr. Balitsaris as CEO, as well as that of Peter Greenough, his chief financial officer, McPhail Depo, at 39:11-16, 81:22-25, 86:10-21, began with Ms. McPhail's receipt of a report that a significant number of retail gift cards, intended for foster children and their families, were missing. Id. at 60:14-62:5. After Ms. McPhail reported the missing cards to Ms. Moss, id. at 63:9-12, it was discovered that there was no policy and procedure to secure the gift cards from theft. Id. at 64:19-65:6. Notwithstanding that policies and procedures were supposedly implemented, Ms. McPhail learned that thousands of dollars worth of additional gift cards were missing. Id. at 65:7-66:21.

Ms. McPhail at that point successfully recommended to Ms. Moss and Mr. Balitsaris that ChildNet engage Wayne Black, a private investigator whom she had used when she was human resources director for the City of Wellington. McPhail Depo, at 17:1-7, 57:19-24, 67:9-68:2.

Ms. McPhail — with Mr. Balitsaris and Ms. Moss's knowledge and authorization — worked alongside Mr. Black and Vincent Mazzilli, another investigator. McPhail Depo, at 57:14-18, 71:21-72:6. Ms. McPhail participated in interviewing witnesses (both with Messrs. Black and Mazzilli and by herself), obtaining documents, determining what steps to take next and, as the scope of the investigation widened, contacting both the Fort Lauderdale Police Department and the Federal Bureau of Investigation.



McPhail Depo, at 53:9-54:20, 56:8-14, 56:22-57:12, 72:23-74:2, 74:8-12, 74:24-75:19, 77:1-14.

As Ms. McPhail and Mr. Black spoke to more people, and found out more information, the scope of the investigation grew. McPhail Depo, at 68:6-20. It broadened to include use of vendors that had not been vetted, purchases of computers from retail outlets at higher prices than would be available from manufacturers, hiring of two convicted felons to work with children and falsification of invoices by Mr. Greenough, the CFO, to disguise capital improvements of ChildNet properties as maintenance — all of which Ms. McPhail understood to be in violation of DCF rules on due diligence, economy, background checks and capital expenditures. Id. at 39:17-40:22, 69:20-71:16. See also April 23, 2007 Letter from DCF to ChildNet, Bates Nos. McPhail 00128-00135, appended to Plaintiff's Notice of Service to Defendant's First Interrogatories and identified at McPhail Depo, 208:10-209:2.<sup>3</sup> Ms. McPhail recommended the termination of Mr. Greenough, who had admitted the falsification of the invoices. McPhail Depo, at 81:11-25 Ms. McPhail also fired the two felons. Id. at 88:7-89:24.

Ms. McPhail and Mr. Black shared all this information with Mr. Balitsaris and Ms. Moss. McPhail Depo, at 50:19-51:1. Mr. Black provided a written report on the investigation March 30, 2007. Id. at 192:12-193:18 and Defendant's Exhibit 10. Ms. McPhail also summarized the progress and

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<sup>3</sup>A copy of the letter is appended to this response as Attachment 3.

scope of the investigation in a April 13 e-mail to Ms. Moss. Id. at 190:23-191:3, 191:14-192:7 and Defendant's Exhibit 9. Mr. Balitsaris and Ms. Moss's response was to tell Ms. McPhail to delete Mr. Black's written report from both Ms. McPhail's computer and from the ChildNet server, which Ms. McPhail understood to be against the law because of the involvement by that time of law enforcement. Id. at 53:1-21. [The FBI took the information seriously enough that it raided ChildNet, seizing financial records for a forensic audit. Id. at 93:24-94:15.] Mr. Balitsaris also told Ms. McPhail to fire Mr. Black because Mr. Balitsaris no longer wanted him working on the investigation. Id. at 77:15-78:1, 78:16-79:1.

As the investigation had broadened, Ms. Moss told Ms. McPhail that Ms. McPhail was overstepping her authority, and that the revelations from the investigation could be damaging to ChildNet. McPhail Depo, at 233:3-16. When Ms. McPhail shared some of the findings with ChildNet's internal auditors, Mr. Balitsaris told her to "back off." Id. at 233:19-234:14. Ms. Moss later that day telephoned Ms. McPhail to scream at her that Ms. McPhail was "way out of bounds" and should "back off." Id. Ms. Moss then sent Ms. McPhail an e-mail, telling her to "cool your jets." Id. at 234:15-18.

Following the termination of Mr. Balitsaris, Ms. McPhail requested to Larry Rein, the acting CEO, to cease reporting to Ms. Moss, who had (along with Mr. Balitsaris) instructed first Ms. McPhail and later Jose Carmona, the then-director of information technology, to delete Mr. Black's investigative report from the ChildNet server, and whom Ms. McPhail considered to be "a

part of the whole problem at ChildNet.” McPhail Depo, at 35:7-16, 87:22-88:3. Mr. Rein granted that request, as well as authorizing Ms. McPhail to fire Carmona for having deleted the report from the server after Ms. McPhail refused to do so. Id. at 85:16-25, 86:22-87:21.

Although Mr. Rein removed Ms. McPhail from Ms. Moss’s supervision, Mr. Rein was very hostile toward her, e.g., ordering her out of a senior staff meeting to which she had been invited immediately after his taking over as interim CEO, McPhail Depo, at 169:15-170:17, lunging at her in the process to underscore his resolve, and refusing to speak with her, notwithstanding that she was his direct report. Id. at 140:14-141:20. Even though development and dissemination of HR policies was part of Ms. McPhail’s job, McPhail Depo, at 171:17-172:19 and Exhibit 1 (Job Description), at “Essential Functions,” ¶ 5, and even though lax background checks had resulted in the hiring of two felons, Mr. Rein took away from Ms. McPhail the responsibility for promulgating a policy on background screening and checks for licenses. Id. at 142:142:10-143:15. Mr. Rein accused Ms. McPhail of placing obstacles in the way of hiring new personnel and stated that he wished to be able to hire anyone immediately without having to go through such reviews. Id. at 241:17-242:4.

Mr. Benitez read the Wayne Black report the day of the April 2007 meeting at which Mr. Balitsaris was fired as CEO and Ginni Miller resigned as board chair following the FBI raid of ChildNet offices, and discussed the scope of the investigation with both Ms. Miller and the new chair, Peter



Bakalar. Benitez Depo, at 11:6-15 and 15:14-16:16. He also telephoned then-Assistant United States Attorney Robin Rosenbaum on behalf of Ms. Miller to find out whether anyone at ChildNet was going to be indicted. Id. at 27:1-28:6.

Mr. Benitez became president and CEO of ChildNet in January 2008. Benitez Deposition, at 6:15-25. Although Mr. Benitez denies ever having discussed the investigation with Ms. McPhail, or having learned from her what her role was in it, id. at 232:13-21, Ms. McPhail testified that Mr. Benitez questioned her curtly during his first meeting with her after becoming CEO about how the Wayne Black investigation had gotten started and what had occurred. McPhail Depo, at 156:21-157:17, 158:25-159:3.

Mr. Benitez reinstated Ms. Moss as Ms. McPhail's direct supervisor in early 2008. McPhail Depo, at 36:11-24, 105:24-106:6. Mr. Benitez ordered the change even though he knew that Ms. McPhail had a poor relationship with Ms. Moss. Benitez Depo, at 31:23-32:13. Ms. Moss immediately removed security from among Ms. McPhail's job responsibilities. McPhail Depo, at 106:7-12. Ms. Moss subsequently executed Mr. Benitez's termination decision — with a broad smile. Id. at 105:5-15.

Mr. Benitez did not have a lot of direct contact with Ms. McPhail, although he did enjoy with her "what [he] would call a good relationship." Benitez Depo, at 34:7-8, 54:9-25. He also observed her as having "a great relationship" with Sylvia Smith-Torres, another member of ChildNet's executive team. Id. at 69:16-21.

The only example of what Mr. Benitez considered rudeness or inappropriate tone on Ms. McPhail's part was in a February 14-15, 2008 e-mail string between Ms. McPhail and former Chief Financial Officer Martin Berkowitz. Benitez Depo, at 32:24-33:4, 41:8-43:20 and Exhibit 2 (ChildNet 114-116).<sup>4</sup> Mr. Benitez never counseled Ms. McPhail in writing, in front of any witness or in the human-resources perspective, but merely claims to have told her on perhaps three occasions to "chill out." Id. at 53:10-55:9, 57:20-58:12.

Mr. Benitez claims to have considered Ms. McPhail to be resistant concerning:

- Whether there should be a shift to the same computer system in payroll and human resources – concerning which Mr. Benitez only had second-hand knowledge from Mr. Berkowitz;
  - "any meaningful evaluation of health insurance plans"; and
  - "in reference to having a plan in place as to reducing staff,"
- Id. at 34:14-35:11, 43:21-44:12.

Although Mr. Benitez characterized Ms. McPhail in his affidavit as being "contentious and argumentative, rather than constructive, in voicing her opinions on... changing ChildNet's existing Human Resources software to ADP's software," Affidavit of Emilio Benitez, at 5, ¶ 18, the only incident that he could recall, other than the e-mail, was at a senior staff meeting to which

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<sup>4</sup>A copy of the e-mail string is appended as Attachment 4.



she was invited to present her views on the subject and, without raising her voice, or using inappropriate language, was “very direct and pointed” and employed a “tone” that Mr. Benitez characterized as “not appropriate.” Benitez Depo, at 59:19-62:22.

When pressed on how Ms. McPhail had been “resistant to paying less money for insurance,” Mr. Benitez said that the only thing of which he could recall was that Ms. McPhail’s benefits specialist in Human Resources had not secured a competing bid to USI, ChildNet’s broker, from which he inferred resistance. Benitez Depo, at 49:11-50:10.

What really happened concerning insurance was that — without any forewarning to Ms. McPhail, whose duties included overseeing employee benefits — Martin Berkowitz, who replaced Peter Greenough as CFO, obtained a quote from an insurance broker that was a client of Joey Epstein, a CPA and ChildNet board member, as, he told Ms. McPhail, Mr. Epstein had instructed him to do. McPhail Depo, at 124:23-125:7, 125:23-126:7, 128:1-9, and Defendant’s Exhibit 3;<sup>5</sup> Deposition of Joseph Epstein,<sup>6</sup> at 14:18-15:22, 18:19-22, 25:22-26:5 and Plaintiff’s Exhibit 6.<sup>7</sup> Mr. Berkowitz then e-mailed to the ChildNet executive team a misleading summary of the

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<sup>5</sup>Defendant’s Exhibit 3, a chain of E-mails Bates stamped ChildNet 117-121, is appended as Attachment 5.

<sup>6</sup>The cover page and relevant testimonial pages of the Deposition of Joseph Epstein are appended as Attachment 6.

<sup>7</sup>Plaintiff’s Exhibit 6, a May 20, 2007 e-mail string, is appended as Attachment 7.

competing quote — one that favored the company represented by Mr. Epstein's client, Deposition of Martin A. Berkowitz, at 13:17-24<sup>8</sup> — shortly before a May 19, 2008 meeting that Mr. Berkowitz had requested for the Executive Team to consider recommending a broker for the next year's group health coverage: the time would have been too short for anyone without Ms. McPhail's human-resources experience to debunk the quote with the "apples-to-apples" comparison that she and her staff were able to prepare quickly. Id. at 128:21-130:1, 180:9-182:3 and Defendant's Exhibit 5.<sup>9</sup> The reason that the bid offered by Mr. Epstein's client was \$100,000 less expensive than the bid from the current provider was that it was for a group health policy that would provide 80 per cent coverage, rather than 100 per cent. McPhail Depo, at 176:3-177:18; Berkowitz Depo, at 13:28-14:6. Mr. Berkowitz announced his surprise at Ms. McPhail's contrary analysis of what he had characterized as a "great offer." Id. at 131:1-25. As a result of Ms. McPhail's analysis, the Executive Team rejected Mr. Epstein's client's proposal. Id. at 132:1-12. Even Ms. Moss, joined by Silvia Smith-Torres, another Executive Team member, told Ms. McPhail that they that it "was not a very nice play" for Mr. Berkowitz to attempt to undermine her in that fashion. Id. at 132:13-133:3.

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<sup>8</sup>The cover page and relevant testimonial pages of the Deposition of Martin A. Berkowitz are appended as Attachment 8.

<sup>9</sup>Defendant's Exhibit 5, an E-mail dated May 15, 2008 and Bates stamped ChildNet 103-104, is appended as Attachment 9.

Berkowitz also insisted on outsourcing to ADP the Human Resources Information System, McPhail Depo, at 150:18-22, on which Ms. McPhail's department maintained complete employee histories, id. at 153:16-154:4, notwithstanding that, **One**, ADP came nowhere near the capabilities that ChildNet needed for an HRIS, id. at 151:10-20, 243:11-244:19, and, **Two**, ChildNet would lose quite a bit of money, i.e., hundreds of thousands of dollars, by going with the ADP system, id. at 159:7-21, 212:23-213:10, 214:24-215:13, and switching from "excellent" Ivantage system, id. at 173:13-19, which ChildNet had already paid \$80,000 to purchase and to install. Id. at 242:5-243:10. Although Mr. Berkowitz insists that "[t]he ultimate decision with regard to outsourcing the HR record-keeping was a financial decision," Berkowitz Depo, at 49:14-18, he was unable at his deposition to testify what, if anything, was incorrect about an analysis that Ms. McPhail prepared ("Five Year Total Cost of Ownership Comparison" SPECTRUM vs. ADP") that showed switching the HRIS to ADP would be considerably more expensive than keeping Ivantage. Id. at 58:1-14 and Plaintiff's Exhibit 22.<sup>10</sup> Ms. Moss, meanwhile, told Ms. McPhail during the decision-making period that Mr. Benitez was not interested in even looking at Ms. McPhail's analysis. McPhail Depo, at 159:7-21.

Concerning Ms. McPhail's being resistant to any evaluation of a reduction of staff, Mr. Benitez does not recall what Ms. McPhail said, but

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<sup>10</sup>The analysis, Exhibit 22, is appended as Attachment 10.



recalled only that she he had heard her tell Mr. Berkowitz, Ms. Moss and Sylvia Smith-Torres that she did not want or think it was necessary to reduce her human-resources staff as Mr. Berkowitz was proposing. Benitez Depo, at 51:12-52:15.

Mr. Benitez only heard, third hand, from Ms. Moss and Dipak Parekh, the new chief financial officer, that ADP personnel had complained that Ms. McPhail had arrived late for training, been disruptive in class and voiced her opinion that switching to ADP would not be best for ChildNet. Benitez Depo, at 58:13-59:4, 78:3-13. Even though that was the triggering event for Ms. McPhail's termination, Mr. Benitez never asked Ms. McPhail if the alleged behavior had actually occurred — which it did not, see McPhail Declaration<sup>11</sup> — or even spoke to anyone who had witnessed it. Id. at , 78:3-20.

### **Governing Legal Principles**

Summary judgment is only appropriate when the moving party demonstrates that no genuine issue of material fact exists, and that the moving party is entitled to a judgment as a matter of law. See Fla. R. Civ. P. 1.510(c); Holl v. Talcott, 191 So. 2d 40, 43 (Fla. 1966). "[T]he burden of proving the absence of a genuine issue of material fact is upon the moving party." Id. "The proof must be such as to overcome all reasonable inferences which may be drawn in favor of the opposing party." Id.

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<sup>11</sup>The Declaration of Leigh McPhail, Under Penalty Of Perjury Pursuant to §§ 92.52 and 92.525, FLA. STAT. is appended as Attachment 11.

As an employee of a private corporation engaging in the privatization of the handling of child welfare functions, Ms. McPhail was protected by both the public-employee and private-sector whistle-blower statutes, §§ 112.3187 and 448.101, et seq., FLA. STAT. (2013). Dahl v. Eckerd Family Youth Alternatives, Inc., 843 So. 2d 956, 958 (Fla. 2nd DCA 2003).

The public-sector act protects, among others, any employee of an independent contractor who “who disclose[s] information on their own initiative in a written and signed complaint; who [is] requested to participate in an investigation...; or ... who file[s] any written complaint to their supervisory officials...” § 112.3187(7). The information disclosed, to be protected, includes

(a) Any violation or suspected violation of any federal, state, or local law, rule, or regulation committed by an employee or agent of an agency or independent contractor which creates and presents a substantial and specific danger to the public’s health, safety, or welfare.

(b) Any act or suspected act of gross mismanagement, malfeasance, misfeasance, gross waste of public funds, suspected or actual Medicaid fraud or abuse, or gross neglect of duty committed by an employee or agent of an agency or independent contractor.

§ 112.3187(5). “Gross mismanagement” is defined as “a continuous pattern of managerial abuses, wrongful or arbitrary and capricious actions, or fraudulent or criminal conduct which may have a substantial adverse economic impact.” § 112.3187(3)(e).

The private-sector act, meanwhile, protects any employee who has either “[p]rovided information to ... any appropriate governmental agency,

person, or entity conducting an investigation ... into an alleged violation of a law, rule, or regulation by the employer,” § 448.102(2), or has “[o]bjected to, or refused to participate in, any activity, policy, or practice of the employer which is in violation of a law, rule, or regulation.” § 448.102(3). “‘Law, rule, or regulation’ includes any statute or ordinance or any rule or regulation adopted pursuant to any ... state ... statute ... applicable to the employer and pertaining to the business.” § 448.101(4).

As the Fourth District Court of Appeal stated in Rice-Lamar v. City of Fort Lauderdale, 853 So. 2d 1125 (Fla. 4th DCA 2003):

To establish a prima facie claim under Florida’s Whistleblower statute, the requisite elements set forth under a Title VII retaliation claim are applied:

To establish a prima facie case of retaliation under Title VII, a plaintiff must show that (1) he engaged in statutorily protected expression; (2) he suffered an adverse employment action; and (3) there is some causal relation between the two events. We previously have noted that the causal link requirement under Title VII must be construed broadly; “a plaintiff merely has to prove that the protected activity and the negative employment action are not completely unrelated.” Once the prima facie case is established, the employer must proffer a legitimate, non-retaliatory reason for the adverse employment action. The plaintiff bears the ultimate burden of proving by a preponderance of the evidence that the reason provided by the employer is a pretext for prohibited, retaliatory conduct.

Olmsted v. Taco Bell Corp., 141 F.3d 1457, 1460 (11th Cir. 1998) (citations omitted); see also Sierminski v. Transouth Fin. Corp., 216 F.3d 945, 950 (11th Cir. 2000)(applying Title VII retaliation analysis to claim arising under private-sector Florida Whistleblower Act on a case of first impression).

Id. at 1132-1133.



While Ms. McPhail's termination would obviously qualify as an adverse employment action, the court in Donovan v. Broward County Bd. of Comm'rs, 974 So. 2d 458 (Fla. 4th DCA 2008)(holding that Broward County's denial of internal discrimination remedies to any employee who filed a Charge of Discrimination with the Equal Employment Opportunity Commission constituted actionable discrimination) noted that a substantially broader range of adverse actions are actionable:

The EEOC, to which Florida courts defer in interpreting any ambiguity in Title VII or in the Age Discrimination in Employment Act (ADEA), states that while "[t]he most obvious types of retaliation are denial of promotion, refusal to hire, denial of job benefits, demotion, suspension, and discharge" and "[o]ther types of adverse actions include threats, reprimands, negative evaluations, harassment, or other adverse treatment, . . . [s]uspending or limiting access to an internal grievance procedure also constitutes an 'adverse action.'" 2 EEOC Compliance Manual, Section 8, Retaliation, Chapter II, Part D, § 1 (May 20, 1998).

Id. at 459-460.

To be causally connected to a protected activity, retaliatory behavior need only get started close in time to the protected activity that a government actor seeks to punish. Temporal proximity, therefore, can be satisfied if the employer or its agent takes a "first step" in the adverse action within that period. See, e.g., Hamilton v. Geithner, 666 F.3d 1344, 1358 (D.C. Cir. 2012) (Title VII case in which "given Hamilton's claim that Burns 'ignored' him in December 2003 when he requested information regarding the detail, ... it appears that Burns actually took a first step toward the adverse action just two months after Hamilton filed his formal complaint");

Heaton v. Weitz Co., 534 F.3d 882, 888 (8th Cir. 2008) (affirming denial of defendant's motion for judgment as a matter of law in Title VII case where a reasonable jury could find that there was a pattern of adverse actions against the plaintiff beginning shortly after the time he complained and lasting until he was laid off).

The United States Court of Appeals for the Eleventh Circuit, meanwhile, has previously pierced the delayed-reaction smokescreen of "a relatively slow and deliberate process to terminate" a first-amendment retaliation victim. Beckwith v. City of Daytona Beach Shores, 58 F.3d 1554, 1566 (11th Cir. 1995)(reversing judgment as a matter of law for a fire chief whom the city terminated in October 1991 for protected speech in August 1990). In a first amendment case, not even a four-year distance between the protected activity and the adverse action would "preclude[ a plaintiff] from producing other evidence to establish causation." Stanley v. City of Dalton, 219 F.3d 1280, 1292 (11th Cir. 2000).

Establishment of a prima facie case, which is "not onerous," creates a presumption of discrimination that an employer must meet with admissible evidence of a legitimate, non-discriminatory reason for the adverse employment decision. See, e.g., Tex. Dep't of Cmty. Affairs v. Burdine, 450 U.S. 248, 254 (1981).

As the Supreme Court observed in St. Mary's Honor Center v. Hicks, 509 U.S. 502 (1993):

[T]he factfinder's disbelief of the reasons put forward by the defendant (particularly if disbelief is accompanied by a suspicion of mendacity) may, together with the elements of the prima facie case, suffice to show intentional discrimination. Thus, rejection of the defendant's proffered reasons will permit the trier of fact to infer the ultimate fact of intentional discrimination.

Id. at 511 (footnote omitted). The Court stressed in Reeves v. Sanderson Plumbing, Inc., 530 U.S. 133 (2000) the rigor with which the defendant's explanation must be viewed, and the lenity that must be accorded the plaintiffs's evidence, at the summary judgment stage — even under the more summary-judgment friendly federal standard:

[A]lthough the court should review the record as a whole, it must disregard all evidence favorable to the moving party that the jury is not required to believe.... That is, the court should give credence to the evidence favoring the nonmovant as well as that evidence supporting the moving party that is uncontradicted and unimpeached, at least to the extent that evidence comes from disinterested witnesses.

Id. at 150 (internal quotation marks, citations omitted). Thus, while a defendant in a circumstantial-evidence case need only articulate a legitimate, non-discriminatory reason for its actions to meet its burden of production following the plaintiff's presentation of a prima facie case, the evidence from which the prima facie case is made, "and inferences properly drawn therefrom[,] may be considered by the trier of fact on the issue of whether the defendant's explanation is pretextual." Burdine, 450 U.S. at 256, n. 10. "Indeed, there may be some cases where the plaintiff's initial evidence, combined with effective cross-examination of the defendant, will suffice to discredit the defendant's explanation." Id.



While an employee's self-assessment of himself as being a "good worker" would be insufficient to counter his employer's opinion of his value to the company, the denial of having engaged in specific behavior of which an employee is accused is different. See, e.g., Munoz v. Oceanside Resorts, Inc., 223 F.3d 1340, 1345 (11th Cir. 2000) ("A reasonable jury accordingly could accept Munoz's theory of events: that Gonzalez concocted a scheme that included both a bogus reprimand and a subsequent false accusation of insubordination to cover his discriminatory desire to discharge an older employee"). From such a denial, a jury may infer from that mendacity contained in the accusation that the real reason for her termination was retaliation.

Meanwhile, pursuant to the maxim "falsus in uno falsus in omnibus," see, e.g., Coral Gables v. Blount, 116 Fla. 356, 360, 156 So. 244, 245 (Fla. 1934), jurors who disbelieved any of a witness's testimony, e.g., Mr. Benitez's denial that he had ever discussed the 2007 investigation with Ms. McPhail, would be free to disbelieve all of that witness's testimony. See, e.g., Florida Standard Jury Instruction 601.2(a)("In evaluating the believability of any witness and the weight you will give the testimony of any witness, you may properly consider ... the frankness or lack of frankness of the witness ...")

### **Applying the Law to the Facts**

ChildNet, a private corporation whose administration was so financially freewheeling as to have drawn sharp criticism from DCF, fired a

conscientious human-resources director who had exposed the frankly fraudulent behavior of its CEO and CFO.

Prior to her termination, Ms. McPhail suffered shunning by the CEO's interim replacement, had her supervision of facilities security taken away by a chief operating officer who had earlier ordered her to delete a critical investigative report from ChildNet's computer server, screamed at her about having overstepped her bounds and warned her to "cool your jets." When Ms. McPhail prepared a report showing how much money ChildNet was going to waste by switching its perfectly functional human-resources record keeping from an Ivantage system that it already owned to an ADP system it was going to have to lease, the COO told her the new CEO, Mr. Benitez, did not even want to read it.

The shunning, and the exclusion of Ms. McPhail from the ChildNet inner circle, began almost immediately after the terminations of former CEO Peter Balitsaris and his CFO, Peter Greenough. As soon as a Emilio Benitez became the permanent CEO, he once again put Ms. McPhail under the supervision of Barbara Moss, the chief operating officer who had instructed Ms. McPhail to delete the investigative report from the server — who immediately stripped Ms. McPhail's security function away.

That same CEO, who admitted having telephoned the U.S. Attorney's office to find out if his predecessor were going to be indicted, denied even discussing with Ms. McPhail the cathartic investigation that led to the termination of ChildNet's CEO, CFO and information technology director,

gave rise to an FBI raid of a quasi-governmental agency and produced an ultimatum from DCF concerning how ChildNet would need to change its behavior.

ChildNet then fired Ms. McPhail for being “disruptive rather than progressive” in her dealings with ADP’s project manager, based on two e-mails alleging behaviors that Ms. McPhail denies — but was never given the chance to do so before being fired, since Mr. Benitez never asked his human resources director (or even any eye witness) about the allegations before acting on them. From the bogus nature of the allegations, jurors could reasonably infer that the real reason for firing Ms. McPhail was something else — such as whistle-blower retaliation.

Further, were jurors to disbelieve Mr. Benitez’s denial concerning the rather curt conversation that Ms. McPhail recalls having upon his assuming the job as CEO, then those jurors would also be free to disbelieve his denial that he fired her out of a residual anger for, **One**, having opened the investigation in early 2007 and, **Two**, having continued — by pointing out the bad bargains that Martin Berkowitz, the new CFO, was proposing concerning both health insurance and computers — to demonstrate that she would not be a silent partner to ChildNet’s mismanagement.

### **Conclusion**

Based on the arguments presented and the authorities cited, plaintiff, Leigh McPhail, respectfully requests this Court to deny defendant ChildNet’s motion for summary judgment in all respects.



### **Certificate of Service**

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished by Hand Delivery and Electronic Delivery this 27th day of January, 2014 to Thomas H. Loffredo, Esquire,tom.loffredo@gray-robinson.com GrayRobinson, P.A. Post Office Box 2328, 401 East Las Olas Boulevard, Suite 1850, Fort Lauderdale, Florida 33303-9998.

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IN THE CIRCUIT COURT OF THE SEVENTEENTH JUDICIAL  
CIRCUIT IN AND FOR BROWARD COUNTY, FLORIDA  
CIRCUIT CIVIL DIVISION

CASE NO.: 08-60736 (25)

R. LEIGH MCPHAIL,

Plaintiff,

v.

CHILDNET, INC. a Florida  
not-for-Profit corporation,

Defendant.

401 East Las Olas Boulevard  
Suite 1850  
Fort Lauderdale, Florida  
Friday, 9:41 a.m. - 1:43 p.m.  
September 21, 2012

VIDEOTAPED DEPOSITION OF R. LEIGH MCPHAIL

VOLUME ONE

(Pages 1 through 114)

Taken on behalf of the Defendant before  
SUSAN MATOS, Court Reporter and Notary Public in and  
for the State of Florida at Large, pursuant to  
Defendant's Re-Notice of Taking Videotaped  
Deposition in the above cause.

1 A. I -- after that I became, I think  
2 that's -- oh, I worked for the City of Wellington  
3 which is a municipality.

4 Q Right. In Palm Beach County?

5 A. Yes.

6 Q And what was your position there?

7 A. Director of human resources.

8 Q And for what period of time?

9 A. From 1997 to 2000, I guess.

10 Q And who did you report to when you worked  
11 as director of human resources for the City of  
12 Wellington?

13 A. Chief financial officer, not -- she wasn't  
14 a CFO, she was equivalent.

15 Q And who was that?

16 A. Francine Ramaglia.

17 Q Can you spell that last name?

18 A. R-a-m-a-g-l-i-a.

19 Q Okay. And what did you do -- why did you  
20 leave the City of Wellington job?

21 A. For the ChildNet job.

22 Q Okay. So that takes you -- that takes us  
23 to ChildNet.

24 A. Yes.

25 Q Got it. Okay. Let me just briefly go



1 compare to your salary at the time you left ChildNet  
2 in 2008?

3 A. Are you asking what my salary was at the  
4 time of --

5 Q. That's one way of doing it, but that's  
6 fine, I'll take that.

7 A. I wasn't sure. I'm sorry.

8 Q. Yes.

9 A. I was making approximately \$93,000.

10 Q. And you've been continuously employed with  
11 Aranon in the chief HR director capacity since  
12 December of 2010?

13 A. I have.

14 Q. Now, let's go back to ChildNet. And  
15 you've already described how you left the City of  
16 Wellington and your next position was ChildNet,  
17 correct?

18 A. Yes.

19 Q. How was it that you became involved --  
20 strike that.

21 How was it that you became employed with  
22 ChildNet? Describe that process to me.

23 A. A friend and mentor of mine, Roy Lance.

24 Q. And who is Roy Lance? What is his  
25 position or what was his position at that time?

1 A. He and I were on the board of Palm Beach  
2 County Human Resource Association together.

3 Q Okay.

4 A. He knew Barbara Mbss.

5 Q And who was Ms. Mbss at that time or what  
6 was her position at that time?

7 A. She was the chief operating officer, as  
8 far as I recall.

9 Q And did Mr. Lance put you in touch with  
10 Ms. Mbss?

11 A. He did.

12 Q And did you interview with Ms. Mbss?

13 A. I did.

14 Q And anyone else at ChildNet?

15 A. Peter Balitsaris came in to speak with me  
16 for a minute.

17 Q And what was Mr. Balitsaris' title at that  
18 time?

19 A. I believe he was the president.

20 Q Of ChildNet?

21 A. Yes.

22 Q Was he the top official at ChildNet?

23 A. As far as --

24 Q In terms of the operational structure of  
25 the company?

1 A. As far as I recall.

2 Q Okay. Anyone else you met with prior to  
3 joining ChildNet?

4 A. No.

5 Q And do you recall when you started with  
6 ChildNet?

7 A. (No response.)

8 Q Do you recall when you started with  
9 ChildNet?

10 A. The actual month, not really.

11 Q So prior to becoming the -- and your  
12 position was chief HR director?

13 A. Human resources director.

14 Q Human resources director.

15 But in your position you were the top  
16 human resources person, correct?

17 A. I was.

18 Q And prior to coming to ChildNet in terms  
19 of being a director level at HR, you had the City of  
20 Wellington and then your work with the Army,  
21 correct?

22 A. Correct.

23 Q How would you compare working as an HR  
24 professional in the military to doing it in the  
25 private sector, what were the differences?



1 A. No. I want to call him the political guy,  
2 but I do not recall his position title.

3 Q He's a political guy?

4 A. I'm sure --

5 Q If it comes back to you, let me know.

6 A. -- it wasn't.

7 Q Now, was that after you reported to  
8 Ms. Mbss and then you reported to Mr. Rein?

9 A. Yes.

10 Q At some point there was a change.

11 Okay. And do you know why that occurred?

12 A. Yes.

13 Q Why?

14 A. Because Barbara Mbss was a part of the  
15 whole problem at ChildNet and I requested to be  
16 reporting to the new CEO.

17 Q Okay. And what happened with Ms. Mbss at  
18 ChildNet? I mean, was she still working there?

19 A. I don't know if she's still working there.

20 Q Was she working there after you left  
21 ChildNet, was she still working there?

22 A. She was.

23 Q Do you know if she stayed in the chief  
24 operating officer position?

25 A. Yes, she was the chief operating officer

1 the entire time that I knew her.

2 Q All right. So at some point you requested  
3 a change in your reporting structure and then you  
4 were shifted over to reporting to Mr. Rein or Rain.  
5 Is it Rain or Rein?

6 A Good question.

7 Q Okay. Larry. We'll agree on Larry.

8 And did you report to Larry until the time  
9 you left ChildNet?

10 A No.

11 Q Who else did you report to?

12 A They put me back under Barbara Moss.

13 Q And when was that?

14 A I'm going to say a year later,  
15 approximately.

16 Q And when you say "they," who did that?

17 A It's a good question.

18 Q To your knowledge, who did that?

19 A As far as I know, it was Emilio Estevez  
20 and Larry Rein and Marty Berkowitz and --

21 Q Well, is it Emilio Benitez?

22 A Is that -- did I say --

23 Q You said Emilio Estevez, the actor.

24 A Oh, there you go. Emilio Benitez.

25 Q Let's just identify, Mr. Benitez, he was

1 A. Yes.

2 Q And why was he let go?

3 A I don't know. That would be a decision  
4 that was made by other people.

5 Q You weren't involved in the decision?

6 A No.

7 Q And then Mr. Greenhough was hired as CFO,  
8 and how long did he remain in that position?

9 A I don't really recall, but at least a  
10 year.

11 Q Okay. And what happened to  
12 Mr. Greenhough?

13 A He was terminated.

14 Q Why was he terminated?

15 A For his involvement with the issues at  
16 ChildNet.

17 Q Okay. And when you -- let me get you to  
18 kind of define -- because we'll go in more detail  
19 obviously -- but the issues at ChildNet, what are  
20 you referring to specifically?

21 A The fraud.

22 Q And fraud in what way? Could you describe  
23 what it is you're referring to?

24 A In particular for him he was submitting  
25 invoices to the state, DCF.



1 Q DCF meaning Department of Children and  
2 Families?

3 A Yes.

4 Q And what --

5 A False invoices.

6 Q False invoices.

7 And why or how were they false?

8 A He was using -- and right now my -- I  
9 would need to see the piece of paper but either --  
10 what he was doing is he was saying that it was a  
11 partition and actually building a wall, but putting  
12 partition on the invoice for the state. And you  
13 cannot build walls in government buildings and then  
14 charge it against the state and have them reimburse  
15 you for that.

16 Q So he was actually building walls and  
17 telling the state they were actually partitions?

18 A Correct.

19 Q Partitions were allowed, walls were not?

20 A Correct.

21 Q And where were the walls being built?

22 A In one of the locations.

23 Q One of the locations. Okay.

24 And then who replaced Mr. Greenhough?

25 A Marty Berkowitz.

1 then we'll take a quick five-minute break.

2 Describe to me what does ChildNet do?

3 What is ChildNet? What is its function?

4 A. They're the lead agency in taking care of  
5 foster children, children brought in from bad homes.

6 Q And, specifically, what are the types of  
7 things that ChildNet does for foster care kids?

8 A. They go to their homes and assess the  
9 situation on whether or not they can return to the  
10 home. And if they can't return to the home, they  
11 place them into a home with foster parents, and then  
12 they evaluate the homes.

13 Q And, generally, nonmanagement type  
14 structure, nonadministrative structure, what are the  
15 types of employees who do the type of stuff you were  
16 just talking about?

17 A. Social workers.

18 Q And how many employees did ChildNet have  
19 when you were there?

20 A. I think we were up to 430.

21 Q And that included management,  
22 administrative, et cetera?

23 A. Correct.

24 Q How many of that 430 was the social worker  
25 type you're talking about, people actually dealing

1 with foster care issues?

2 A. Probably close to 300.

3 Q And what, during the time period you were  
4 with ChildNet, what were the -- what was the  
5 geographic scope of responsibility for ChildNet for  
6 foster care services?

7 A. Broward --

8 Q Just Broward?

9 A. -- County.

10 Q Okay. And how -- during the time period  
11 you were with ChildNet, how was ChildNet funded?

12 A. Through the Department of Children and  
13 Families, state funded.

14 Q Was ChildNet a quasi public, slash,  
15 private entity or how would you describe it?

16 A. They were a private nonprofit.

17 Q Had a board of directors?

18 A. They did.

19 Q Did you ever interact with the board of  
20 directors?

21 A. I did not.

22 Q Ever?

23 A. Not that I recall.

24 Q Do you know who the chairman of the board  
25 was during the time period that you worked at



1 ChildNet?

2 A. I know that Emilio Benitez was on there.  
3 I don't know when, I just know that he was. And  
4 there's another man that I've spoken to before that  
5 was the president, and I don't recall his name. I'm  
6 sorry.

7 Q Okay. But you yourself had no interaction  
8 with the board or its members during the time you  
9 worked at ChildNet?

10 A. I did not, that I recall.

11 Q Okay. And because of the received funding  
12 from the department -- the Florida Department of  
13 Children and Families, was ChildNet subject to  
14 compliance with that agency's rules, regulations, et  
15 cetera?

16 A. Yes.

17 Q And were they extensive or minimal? How  
18 would you describe them?

19 A. I would say they were extensive.

20 Q And did you become familiar with them as  
21 part of your duties as HR director?

22 A. Absolutely, mm-hmm

23 Q Was there any special training you  
24 received or was it simply on the job?

25 A. They came in originally and shared the

1 information with me, told me what was expected. So  
2 I met with the -- the people who came in and did the  
3 audits.

4 Q When you -- I'm sorry. When you  
5 transitioned from City of Wellington doing the HR  
6 there to ChildNet, what differences in your  
7 day-to-day duties did you have as a result of the  
8 fact this was an entity -- a private entity doing,  
9 kind of, public work through the Department of  
10 Children and Families?

11 A Well, while I was at the City of  
12 Wellington I had to do many of the same things that  
13 I had to do at ChildNet because there were children  
14 who would come in and go to camp, and they would  
15 have to have all of the people who worked for the  
16 village of Wellington were required to have  
17 background screenings that went through DCF. So  
18 there -- it was just a bigger scheme of things as  
19 opposed to different.

20 Q Okay. Now, tell me what your -- the scope  
21 of your duties and responsibilities were as the  
22 human resources director at ChildNet for the years  
23 you were there.

24 A I handled -- well, recruiting, benefits,  
25 retirement, 401(k), the records maintenance -- which

1 included all of the background screenings, drug  
2 testing.

3 Q Was that for all new hires?

4 A All new hires and it was a continuous  
5 ongoing processing really.

6 Q Okay.

7 A Performance, appraisals, compensation,  
8 terminations. Do you want the full litany of  
9 things?

10 Q Yes. Anything else you can think of?  
11 What about payroll?

12 A We entered payroll information into the  
13 HRS system and then exported it to the payroll --  
14 payroll function, but I didn't actually have -- I  
15 didn't oversee the payroll department.

16 Q What does that mean, entered into the --  
17 you said HRS system?

18 A Human Resource Information System is a  
19 database, basically, where you hold all of the  
20 information about an employee.

21 Q So it was a ChildNet database?

22 A Yes.

23 Q So payroll information for Joe Blow  
24 ChildNet employee would be downloaded into the HRS  
25 system?

1 BY MR. LOFFREDO:

2 Q Ms. McPhail, in this case you've alleged  
3 violations of the Whistleblower Statute by ChildNet,  
4 and that as a direct result you suffered adverse  
5 employment action. Can you tell me the actions you  
6 took or the issues you complained of that you  
7 believe constituted the protected activity under the  
8 Whistleblower Statute? In other words, what law,  
9 regulations or rules did you complain about or  
10 object to that you believe or causally related in  
11 any way to anything you believe in terms of adverse  
12 employment action that was taken against you by  
13 ChildNet?

14 MR. AMONG I object to the extent this  
15 seeks a legal conclusion from a lay witness.

16 BY MR. LOFFREDO:

17 Q Do you understand my question? Let me  
18 rephrase it.

19 At any time during your employment with  
20 ChildNet, did you object to or complain about a  
21 violation of a law, rule or regulation?

22 A. Yes.

23 Q Tell me each and every time you did that.

24 A. During a meeting with Barbara Moss and  
25 Peter Balitsaris, Wayne Black and myself shared a



1 report of all of the violations to them

2 Q Okay. And, first of all, let me ask you  
3 when was that?

4 A I don't recall the actual date.

5 Q And when you say -- you said all the  
6 violations, what are you referring to?

7 A The fraud.

8 Q That was by Mr. Greenhough?

9 A Yes.

10 Q What else?

11 A The fact that they -- the computer was  
12 stolen with names of -- and Social Security numbers.

13 Q One computer or computers?

14 A One.

15 Q With names and socials?

16 A Correct.

17 Q And anything else that you recall in terms  
18 of the violations that you just referred to?

19 A That were on the report?

20 Q Yes.

21 A There were gift cards stolen.

22 Q Okay. By whom?

23 A We never found that out.

24 Q ChildNet employees?

25 A We believe so.

1           A.     After giving them the report the two of  
2     them, Peter Balitsaris and Barbara Moss had a  
3     conversation with each other and Barbara Moss called  
4     me and told me to delete the report from my computer  
5     and from the server.

6           Q     Okay. Was that a violation of law, rule  
7     or regulation to your knowledge?

8           A.     In the middle of an investigation, yes.

9           Q     Investigation by whom, by Wayne Black?

10          A.     By myself and Wayne Black.

11          Q     Was law enforcement involved at this  
12     point?

13          A.     Yes.

14          Q     And how was law enforcement involved?

15          A.     They were involved in the loss of the  
16     computer and they were aware of the fraud that  
17     occurred.

18          Q     How were they aware?

19          A.     They were told.

20          Q     By?

21          A.     Myself and Wayne Black.

22          Q     Who did you tell?

23          A.     Wayne Black.

24          Q     Okay. Did you tell --

25          A.     Who else have I told?

1 Q Yes.

2 A Randy Pel ham

3 Q Who is that?

4 A He is the lieutenant at the Fort

5 Lauderdale Police Department.

6 Q Who else?

7 A I had conversations with most of the  
8 police that were there that day and I couldn't tell  
9 you --

10 Q When you say --

11 A -- and if FBI so...

12 Q Let's back up for a second.

13 When were Lieutenant Pel ham or the  
14 police -- are you saying they were present at  
15 ChildNet?

16 A Yes, they did come to ChildNet.

17 Q And why did they come to ChildNet?

18 A We asked them to come to ChildNet.

19 Q Who asked them?

20 A I asked them to come to ChildNet.

21 Q Did Mr. Black ask them to come to  
22 ChildNet?

23 A I would imagine he did too.

24 Q Was the report that you say Mr. Black did  
25 as a result of his investigation, was that provided

1 A. No.

2 Q So the report -- to the extent that report  
3 was actually provided to law enforcement, it was not  
4 done by you; is that correct?

5 A. That specific report?

6 Q Correct.

7 A. No.

8 Q What information, if any, did you provide  
9 to law enforcement?

10 A. I reported to law enforcement of the loss  
11 and theft and fraud.

12 Q Was that after the report had been done or  
13 -- excuse me -- strike that.

14 A. No, that was before.

15 Q Let me back up.

16 Was it before Mr. Black had done his  
17 investigation?

18 A. Before the investigation? Of course not.

19 Q Okay. So you reported to law enforcement  
20 the missing computer?

21 A. Correct.

22 Q And what else?

23 A. The fraud.

24 Q And that fraud is what you described that  
25 Mr. Greenhough had been doing regarding billing?



1 A. Yes.

2 Q And this was after Mr. Black had done his  
3 investigation; is that correct?

4 A. While Mr. Black and I did the  
5 investigation.

6 Q What was your actual role in the  
7 investigation that you're referring to, what did you  
8 do?

9 A. I sat through interviews, interviewed  
10 people, determined who we needed to talk to.

11 Q Okay. Anything else?

12 A. I set up -- I contacted the police.

13 Q Did your -- did Ms. Moss and  
14 Mr. Balitsaris know that you were conducting an  
15 investigation?

16 A. They did.

17 Q Did they authorize the investigation?

18 A. They did.

19 Q Who made the decision to hire an  
20 investigator?

21 A. Peter Balitsaris.

22 Q And who made the decision specifically to  
23 hire Mr. Black as the investigator?

24 A. It was my recommendation.

25 Q And who made the decision to actually hire

1 Q I mean, you were HR director. Were there  
2 other records that you didn't have that might show  
3 that he was employed?

4 A Oh, I didn't control anything to do with  
5 the board, and he was on the board.

6 Q But as a board member would he have  
7 involvement, to your knowledge, in any day-to-day  
8 operations of ChildNet that resulted in the  
9 violations that you believe were contained within  
10 that investigative report?

11 A I can't answer that question.

12 Q Is the answer you don't know?

13 A Right.

14 Q All right. Let's talk about the issues,  
15 since you said an investigative report is the basis  
16 for your whistleblower claim. When did you first  
17 become aware that there was any kind of issue of  
18 wrongdoing of any kind at ChildNet?

19 A When the gift cards went missing.

20 Q And explain to me when you say gift cards,  
21 specifically, what are we talking about? Where did  
22 ChildNet get them? What were they -- what was their  
23 intended purpose and who had access to them?

24 MR. AMLONG Object to the form Compound  
25 question.

1 gift cards were missing?

2 A. It was reported to me.

3 Q By whom and when?

4 A. I don't know for sure, but I would --

5 my -- as I recall it would be Teresa who was the

6 living -- gosh, it's been so long.

7 Q Is that Teresa Kennedy?

8 A. That's right.

9 Q Okay.

10 A. And there's another gal that worked for

11 her that shared this information.

12 Q What was Ms. Kennedy's position?

13 A. That's what I was trying to remember.

14 Q Okay. Ms. Kennedy, did she have any type

15 of role with regard to the gift cards? I'm not

16 saying wrongdoing but just in general, the typical

17 processing of the cards.

18 A. I believe her and this other person were

19 the ones who purchased those gift cards.

20 Q And what exactly did Ms. Kennedy and the

21 other person you can't remember report to you?

22 A. That the gift cards were missing.

23 Q And are we talking about one gift card,

24 ten gift cards, 100 gift cards?

25 A. Several. I don't remember the exact

1 Q Prior to the investigation, did you have  
2 an understanding of what the procedures were or lack  
3 thereof?

4 A No.

5 Q You weren't involved in that process?

6 A No.

7 Q So what happened next after meeting with  
8 Ms. Mbss with regard to the gift cards?

9 A We asked that she -- she set up policies  
10 and procedures on how to handle it and make sure  
11 that the gift cards were locked up.

12 Q That was Ms. Mbss' directive?

13 A Yes.

14 Q And did that happen?

15 A I know that I shared that information with  
16 her and she said that it did.

17 Q You shared the information with  
18 Ms. Kennedy?

19 A Teresa.

20 Q Okay. And to your knowledge was it done?

21 A To my knowledge it was.

22 Q Now, after that time period when you  
23 conveyed Ms. Mbss' direction to Ms. Kennedy about  
24 the gift card policies and procedures, were there  
25 any further incidents of either missing or stolen



1 gift cards?

2 A. Yes.

3 Q And how did that come to your attention?

4 A. It was reported to me.

5 Q By whom?

6 A. Either Teresa or this other gal that I  
7 can't remember her name.

8 Q Do you recall the amounts at issue with  
9 regard to either stolen or missing gift cards before  
10 you went to see Ms. Moss and at this subsequent  
11 time?

12 A. Could you repeat --

13 Q Like how much was missing, the value of  
14 the gift cards?

15 A. Thousands.

16 Q Thousands. Okay.

17 A. I don't know specific but -- I don't  
18 recall specific, I should say.

19 Q So Ms. Kennedy came back to you to report  
20 again that there are missing gift cards?

21 A. Yes.

22 Q Do you know why she came to you?

23 A. Because that would be a normal, proper  
24 procedure for them to report it to the HR  
25 department.

1 Q Why?

2 A So that I can do an investigation.

3 Q As opposed to going to someone else like  
4 Ms. Mbss or the CEO? Was there anything in your job  
5 description or in the policies and procedures at  
6 ChildNet that said that any incident you report it  
7 to HR?

8 A Yes.

9 Q So what did you do at that point?

10 A I reported it again to Barbara Mbss, and  
11 then Barbara Mbss and I went and discussed it with  
12 Peter Balitsaris with the recommendation to use  
13 Wayne Black to find out what happened.

14 Q Okay. So did Ms. Mbss join in your  
15 recommendation to retain an investigator?

16 A Yes.

17 Q And she agreed with your recommendation to  
18 use Mr. Black?

19 A Yes.

20 Q And you recommended Mr. Black because you  
21 had previously worked with him?

22 A Yes.

23 Q And Mr. Balitsaris agreed with the  
24 recommendation from both you and Ms. Mbss to go  
25 ahead and conduct an investigation and retain

1 Mr. Black to do it, correct?

2 A. Yes.

3 Q And do you recall when that was?

4 A. If I had something, I could tell you.

5 Q All right. We'll get to that.

6 And was that the only thing that Mr. Black  
7 was retained to investigate was the missing gift  
8 cards?

9 A. In the beginning, yes.

10 Q When you say "in the beginning" --

11 A. When this first occurred, yes.

12 Q Were there things afterwards, after  
13 Mr. Black was retained, that also became part of the  
14 scope of his investigation?

15 A. Yes.

16 Q And what were those things?

17 A. The loss of the computer and then as we  
18 spoke to people and interviewed people, we found out  
19 more information. And so as we found out more  
20 information, his scope got larger.

21 Q Let me see if I can -- based upon your  
22 testimony here, and you can correct me if I'm  
23 wrong -- summarize the items then that did become  
24 part of Mr. Black's investigation. They were either  
25 the stolen or missing gift cards which started the

1 i n v e s t i g a t i o n ?

2 A. Mm-hmm

3 Q You have to say yes. Correct?

4 A. I...

5 Q You went mm-hmm It's all right. Let me  
6 finish my question.

7 So the scope of the investigation started  
8 with the gift cards.

9 A. Yes.

10 Q Then ultimately included the billing  
11 issues, correct, with Mr. Greenhough?

12 A. Yes.

13 Q And then the stolen computer that had the  
14 names and private identification information; is  
15 that correct?

16 A. Yes.

17 Q Was there any other aspect of the  
18 investigation?

19 A. Through the questioning of the interviews,  
20 things like stolen computers.

21 Q Anything else?

22 A. Using vendors that were not vetted.

23 Q Is that illegal?

24 A. The Department of Children and Families  
25 has a policy that they require people to do their



1 due diligence and not spend their money unwisely.

2 Q What specific -- is that a -- can you  
3 give me -- refer me specifically to a provision or a  
4 regulation that says you have to use due diligence  
5 and not spend money unwisely?

6 A I don't recall that, but you can read  
7 state law and it would -- it would be in the state  
8 law.

9 Q Okay. So you're saying there is a state  
10 law somewhere that says that an agency like ChildNet  
11 or an entity like ChildNet, because of its  
12 involvement with the Department of Children and  
13 Families, has to use due diligence so that they  
14 don't spend money unwisely; is that what the law or  
15 statute or regulation says?

16 A Specifically -- I'm not an attorney, so  
17 therefore I wouldn't be able to tell you  
18 specifically what the law says. I can give you a  
19 paraphrase of what is there.

20 Q So which vendors was ChildNet allegedly  
21 using then that had not been properly vetted?

22 A I don't recall the name. There were  
23 several different vendors that they were buying the  
24 computers through that was -- that were effectively  
25 costing ChildNet more money than if they had gone

1 directly to an individual company. So they used a  
2 third party.

3 Q When you say an "individual company," you  
4 mean like a manufacturer?

5 A Right.

6 Q Like Dell?

7 A Yes.

8 Q Like Mr. Arlong's computer here?

9 A That's a perfect example.

10 Q And they went through, say, Computer  
11 Associates or something instead of -- or CompUSA  
12 instead of --

13 A Yes.

14 Q And that came up during the investigation  
15 that Mr. Black was doing?

16 A Yes.

17 Q Anything else that was within the scope of  
18 Mr. Black's investigation?

19 A I'm sure that we could find more things,  
20 but my recollection at this point...

21 Q Okay. So ChildNet, based upon your  
22 recommendation, Ms. Mbss' agreement with that  
23 recommendation and Mr. Balitsaris' authorization to  
24 do so hires Wayne Black to begin the investigation.  
25 Who was involved in doing the investigation besides

1 Mr. Black personally?

2 A. Myself and Vince Mazzilli.

3 Q Who is Vince Mazzilli?

4 A. He is an agent that works for Wayne Black.

5 Q So he's also a private investigator?

6 A. Yes.

7 Q Anyone else?

8 A. When you're asking me who else helped with  
9 the investigation, there were a number of people  
10 who, you know, helped, but I don't -- I need you to  
11 be a little more clear with me on exactly what  
12 you're asking.

13 Q Mr. Black guided the investigation,  
14 correct?

15 A. Yes.

16 Q And he was involved in gathering  
17 information both from witnesses and documents in  
18 order to conduct the investigation, correct?

19 A. Yes.

20 Q Mr. Mazzilli, likewise, was involved in  
21 that manner?

22 A. Yes.

23 Q What was your role in assisting Mr. Black  
24 in doing his investigation?

25 A. The same.

1 Q Helping provide information and access to  
2 witnesses at ChildNet?

3 A I did interviews. I did investigations.  
4 I --

5 Q Well, let me ask you this, in terms of --  
6 let me back up for a second.

7 In terms of interviews, did you ever  
8 interview someone alone without Mr. Black or  
9 Mr. Mazzilli being present that became part of  
10 Mr. Black's ultimate investigative report?

11 A I did the initial investigation of these  
12 things. I had talked to people like Teresa and --

13 Q With regard to the gift cards that you  
14 described earlier.

15 A Sure.

16 Q Okay. Once Mr. Black was retained, what  
17 was your role in terms of interviewing anyone on any  
18 issue that was within the scope of Mr. Black's  
19 investigation at ChildNet?

20 A I sat in the interviews. Not every single  
21 one of them but I sat in the interviews and I also  
22 asked questions during the interview process.

23 Q And the interviews were conducted either  
24 by Mr. Black and/or Mr. Mazzilli with you present;  
25 is that correct?



1 A. The interviews were conducted by all three  
2 of us.

3 Q Okay. Well, and you said some you weren't  
4 there.

5 A. Some of them they chose not to have --  
6 actually, some of them they -- I wasn't available  
7 because I had to do my own function.

8 Q But either Mr. Black and/or Mr. Mazzilli  
9 were present for all of these interviews, one or the  
10 other of them correct?

11 A. I can't say all interviews, because I know  
12 that I did interview people without them there.

13 Q Did you do writeups of the interviews?

14 A. I have, probably, notes.

15 Q Do you have them in your personal  
16 possession?

17 A. No.

18 Q Did you provide them to Mr. Black?

19 A. I would have probably done that on an  
20 e-mail.

21 Q Okay. Who did you specifically interview  
22 yourself as part of Mr. Black's investigation?

23 A. It wasn't Mr. Black's investigation.

24 Q Okay. Well, once the -- Mr. Black was  
25 retained, did you conduct any interviews yourself

1 with regard to matters that were part of the  
2 ChildNet investigation to be done by Mr. Black?

3 A. Yes.

4 Q. Who did you interview by yourself?

5 A. Jose Carmona.

6 Q. Okay. And who's that?

7 A. He was the director of IT.

8 Q. Okay. Who else?

9 A. There is another guy who did Telecom that  
10 I can't recall his name.

11 Q. Okay. Who else?

12 A. I would have done -- any -- I don't think  
13 Teresa, I would have done my talk with her.

14 Q. That's Ms. Kennedy, correct?

15 A. Right. And the other gal with the curly  
16 hair -- which I don't recall her name. The  
17 individual who lost the computer -- and I don't  
18 recall his name -- who it was his office that they  
19 stole it out of.

20 Q. This is the computer that had the names  
21 and other data, you don't recall his name?

22 A. I don't recall.

23 Q. What was the office where the computer was  
24 stolen from?

25 A. What was it?

1 Q But anyone else you can think of that you  
2 yourself interviewed?

3 A There -- I mean, I interviewed Brady  
4 Washington. I interviewed -- what was that guy's  
5 name -- there was a girl too. It's the girl who's  
6 in charge of the children's gifts for Christmastime,  
7 which is another part of the report that was --  
8 since you were asking about that.

9 Q You met with her?

10 A I did.

11 Q And for any of these interviews that you  
12 say that you conducted yourself, you provided  
13 Mr. Black with information from those interviews?

14 A Yes.

15 Q Did anyone at ChildNet try to prevent you  
16 in any way from assisting Mr. Black or conducting  
17 your -- your part of the investigation?

18 A In the beginning, no.

19 Q And at some point did that change?

20 A It did.

21 Q When did that change?

22 A At the end when I was told that I needed  
23 to fire Wayne Black.

24 Q Okay. And who told you to fire Wayne  
25 Black?

1 prevent you from meeting with a witness, getting  
2 information, tell you not to do this, tell you not  
3 to do that? Did they try to control the  
4 investigation in any way?

5 A. I wish I could remember. I know that  
6 there were issues prior to us meeting because I had  
7 a conversation with Barbara Mbss and I said, I'm not  
8 sure what's going on with Peter, but you need to  
9 help Peter make the right decision here.

10 Q And what were you referring to?

11 A. Continuing on with the investigation and  
12 doing the right thing. I had made a recommendation  
13 that the CFO needed to be fired and that she needed  
14 to share that with Peter Balitsaris. I did not have  
15 that direct link with him. And that she needed to  
16 continue to support this and she said that she  
17 would.

18 Q Support what?

19 A. Support him being terminated. I said,  
20 because you're going to end up causing the company  
21 to go down if he doesn't make the right decision.

22 Q And what happened to Mr. Balitsaris?

23 A. What happened to him?

24 Q Was he terminated?

25 A. Yes.



1 Q Was this before or after the report that  
2 was presented --

3 A After.

4 Q -- to the board?

5 A Oh, before.

6 Q Before. Well, whatever she did or didn't  
7 do, it didn't prevent the board from getting the  
8 report, correct?

9 A Correct.

10 Q Did -- other than the firing of  
11 Mr. Balitsaris, other than the resignation by  
12 chairman -- Chairperson of the Board Jenny Miller,  
13 as a result of the Wayne Black report, did ChildNet  
14 take any other action against any other employee in  
15 terms of their jobs?

16 A Yes.

17 Q Who?

18 A Peter Greenhough was terminated the next  
19 day.

20 Q And he was CFO at the time?

21 A Yes.

22 Q Okay. Any other disciplinary actions as a  
23 result of the findings of the Wayne Black report?

24 A Jose Carmona was terminated.

25 Q And what was his position?

1 A. Director of IT.

2 Q Were you involved in the process, decision  
3 making process or the actual firing of  
4 Mr. Greenhough?

5 A. I'm the one who fired him

6 Q And who told you to fire him?

7 A. Larry Rein.

8 Q And what was Mr. Rein's position, was he  
9 acting CEO at the time?

10 A. Yes.

11 Q Because Mr. Balitsaris had been fired.

12 A. Yes.

13 Q Mr. Carmona was director of IT, did you  
14 participate in that discharge decision?

15 A. Yes.

16 Q And why was Mr. Carmona fired?

17 A. For his -- for deleting the information  
18 from the server.

19 Q When you say "the information," you're  
20 talking about the report?

21 A. Yes.

22 Q And that was at Ms. Moss' direction you  
23 say?

24 A. The firing?

25 Q No, the deleting the report from the

1 system

2 A. That was at Peter Balitsaris' and Barbara  
3 Mbss' decision.

4 Q Any other employment actions taken by  
5 ChildNet as a result of the findings of the Wayne  
6 Black report?

7 A. Brady Grant Washington was terminated and  
8 the other guy, I can't remember his name.

9 Q And why was Brady Washington fired? First  
10 of all, what was his position?

11 A. Both of them were felons.

12 Q Okay. They were fired because they had  
13 felony records?

14 A. Yes.

15 Q And is that something that is a  
16 disqualifying factor to be employed by ChildNet?

17 A. Yes.

18 Q Why specifically is that a disqualifying  
19 factor?

20 A. That would be on a -- part of the state  
21 requirements.

22 Q The state requires that ChildNet not hire  
23 anyone with a felony record?

24 A. Correct. Well, there's a list.

25 Q There's a list.

1 How did they get hired, like what happened  
2 there?

3 A. Apparently Robert --

4 Q. Who's Robert?

5 A. What's Robert's last name? He was a  
6 director of all the -- over the -- all the foster  
7 social workers.

8 Q. Okay.

9 A. He hired them

10 Q. Was this during the time you were director  
11 of HR?

12 A. No.

13 Q. Okay. So somehow, through whatever  
14 efforts by Robert -- you can't remember his last  
15 name -- these two guys got in even though they had  
16 felony records?

17 A. Yes.

18 Q. Okay. So Brady Washington and another  
19 gentleman were fired because they were felons and  
20 shouldn't have been working at ChildNet?

21 A. Yes.

22 Q. Were you involved in their -- that  
23 discharge decision as to those two gentlemen?

24 A. Yes.

25 Q. Anyone else that was fired and/or



1 Q And that was to the Fort Lauderdale P.D.?

2 A Yes.

3 Q And who specifically did you deal with, if  
4 you recall, at Fort Lauderdale P.D. with regard --

5 A Randy Pelham

6 Q Do you know if any federal, state or local  
7 law enforcement or agency took any action against  
8 ChildNet or any of its persons involved or  
9 implicated in the Wayne Black report? Did any of  
10 those -- any agency take any criminal action against  
11 ChildNet or any of the people implicated in the  
12 report?

13 A I would -- when you say "take action,"  
14 what do you mean specifically by take action?

15 Q Well, okay. Was anyone ever charged with  
16 a crime that in any way was implicated by the Wayne  
17 Black report?

18 A I don't believe that they actually went to  
19 court, but I do believe that they were charged with  
20 a crime.

21 Q Who?

22 A Peter Balitsaris, Peter Greenhough, that  
23 would be only two that I -- I would --

24 Q And why is it you believe that either  
25 Mr. Balitsaris or Mr. Greenhough were actually

1 charged with a crime by any federal, local or state  
2 agency?

3 A. Because we reported it to the FBI and the  
4 FBI came into ChildNet and took all their records.

5 Q. Well, what happened after the FBI -- and  
6 when did that happen? When did the FBI come in and  
7 take ChildNet's records?

8 A. Let's see, in 2008.

9 Q. Was it before or after you left ChildNet?

10 A. Before.

11 Q. What did they take?

12 A. They took all the financial records.

13 Q. Do you know what the FBI did with those  
14 financial records?

15 A. They did a forensic audit.

16 Q. And do you know what the results of the  
17 forensic audit were -- audit were?

18 A. The specific results, I did not know the  
19 specific results. But I do know that they reported  
20 it to -- they shared that information with the  
21 prosecutor.

22 Q. Federal prosecutor?

23 A. State prosecutor. Federal or state  
24 prosecutor, I'm not sure specifically.

25 Q. Well the FBI is the Federal Bureau of

1 A. I don't know.

2 Q So because she actually was there when you  
3 were terminated; is that correct?

4 A. Yes.

5 Q And who actually informed you you were  
6 terminated, was it her or was it Ms. Mbss?

7 A. They both did.

8 Q Okay.

9 A. With very large smiles on their face.

10 Q And Ms. Mbss was still, at that time, was  
11 your direct supervisor?

12 A. She had been made my direct supervisor  
13 again, yes.

14 Q And other than -- and do you know if she  
15 had any involvement in the decision to discharge  
16 you?

17 A. I can only assume.

18 Q You don't know? You don't know if she did  
19 or not?

20 A. I don't know. She terminated me so...

21 Q She carried out the termination; is that  
22 correct?

23 A. Correct.

24 Q Is there anything else that Ms. Mbss did  
25 that you consider to be an adverse employment action

1 as a result of your involvement in that  
2 investigation that you've described?

3 A. When she became my boss again.

4 Q. And when was that?

5 A. Probably three or four months or so prior  
6 to my termination.

7 Q. And what happened?

8 A. She removed security from my area of  
9 responsibility.

10 Q. When was that?

11 A. Like immediately after she took the job  
12 back.

13 Q. Who did she assign that responsibility to?

14 A. I believe the IT department.

15 Q. Now, what was your role with regard to  
16 security prior to this time when you say Ms. Moss  
17 took that responsibility away from you?

18 A. Monitoring the cameras, the entrances.

19 Q. You mean like building security?

20 A. Building security. Actually, it went to  
21 facilities, it didn't go to IT.

22 Oh no, those were okay, you could have  
23 kept those on there. It wasn't part of IT.

24 Q. Stop looking at my notes, please.

25 A. Sorry. It's really hard not to look at



1 that they put on the termination notice.

2 Q Was that one of them or no?

3 A Specifically, no.

4 Q Okay. And was there -- what was the  
5 impact during the couple of weeks that you mentioned  
6 that this system was shut off?

7 A It was not well received by my employees.  
8 They felt that they were being chastised and did not  
9 understand why they were being hurt by the  
10 relationship that was happening between me and other  
11 folks in the company.

12 Q So you -- well, did Mr. Berkowitz ever  
13 explain why he shut off the HRIS system maintenance?

14 A No.

15 Q Did you ask him?

16 A Yes.

17 Q And what did he say?

18 A Because he said we didn't need it.

19 Q So the CFO made the decision that you  
20 didn't need it, you thought you did, you complained  
21 to the COO and it was turned back on.

22 A Correct.

23 Q Anything else Mr. Berkowitz did?

24 A He went out and negotiated benefits  
25 without my knowledge.

1 Q And you think he did that why?

2 A He wanted to allow -- first of all,  
3 another individual, who I can't recall, according to  
4 him had recommended these -- this particular group  
5 and --

6 Q What was the group?

7 A Coventry.

8 Q A pretty well-known benefits provider down  
9 here.

10 A Not at the time.

11 Q They are now, though, aren't they?

12 A They have a presence.

13 Q Okay. Who provides the benefits with your  
14 company?

15 A Cigna.

16 Q Okay. So who was the current provider at  
17 this time when Mr. Berkowitz suggested Coventry?

18 A That's a good question.

19 Q You don't recall who it was or what it  
20 was?

21 A I want to say United Healthcare but I  
22 could be wrong.

23 Q And your issue with that is that the CFO  
24 went out and negotiated a potential benefits change  
25 without consulting you?

1 A. Correct.

2 Q Did you ask him about that?

3 A. Yes.

4 Q And what did he say?

5 A. That someone told him to do it.

6 Q Who told him to do it?

7 A. One of the people on the board.

8 Q Who?

9 A. I do not recall the name of the person,  
10 but if I saw the name I would know who it is.

11 Q So someone on the board told him to go out  
12 and negotiate a new benefits package. What is --  
13 who told you this, Mr. Berkowitz?

14 A. Yes.

15 Q Did he say that the person on the board  
16 told him to negotiate a new benefits package with  
17 Coventry or he -- the board member, unidentified  
18 board member instructed him to negotiate with  
19 Coventry without consulting you?

20 A. I don't know what the...

21 Q So your understanding from Mr. Berkowitz  
22 is that he negotiated with Coventry simply because  
23 he was instructed to by a board member.

24 A. According to him

25 Q According to him Okay.

1 MR. AMONG Mr. Loffredo, I can either do  
2 this on cross or I can suggest a name of the  
3 board member right now.

4 MR. LOFFREDO Sure.

5 MR. AMONG So you won't have to come  
6 back in redirect.

7 MR. LOFFREDO Fine.

8 MR. AMONG Was it Joey Epstein?

9 THE WITNESS: Yes.

10 BY MR. LOFFREDO:

11 Q Okay. So Mr. Epstein told you that --

12 MR. AMONG No, no.

13 BY MR. LOFFREDO:

14 Q I'm sorry, Mr. Berkowitz told you that  
15 Mr. Epstein told him to negotiate with Coventry.

16 A Yes.

17 Q Okay.

18 A And that -- that that's who he wanted to  
19 have on and, you may or may not know this, but  
20 normally you go through a bidding process.

21 Q Okay. And other than the fact that  
22 Mr. Berkowitz negotiated with Coventry without your  
23 knowledge, what else about anything that  
24 Mr. Berkowitz did with regard to that process did  
25 you have objection to?



1           Okay. What was the discussion there in  
2           that meeting?

3           A. Marty basically said that he thought that  
4           he had a great offer. That he was going to remove  
5           himself from making the decision and allow the staff  
6           to do that and --

7           Q. When he referred to staff, who was he  
8           referring to? I mean, everything else that he  
9           said --

10          A. The people in that room

11          Q. All right. And so what else happened?

12          A. And that he -- since I had sent the e-mail  
13          out, that they could make the decision.

14          Q. Was this a board decision or a staff  
15          decision?

16          A. This was a staff decision.

17          Q. Okay. And did Mr. Berkowitz address your  
18          calculations?

19          A. He did.

20          Q. Or your comparison? And what did he say  
21          about it?

22          A. He was surprised.

23          Q. Okay. Surprised in what way?

24          A. That it could possibly come in lower than  
25          his.

1 Q And so what was the decision of the staff?

2 A To go -- to remain where we were at.

3 Q And do you know how long they remained  
4 with -- you're saying it was United, you think it  
5 was United. How long did they stay with United, do  
6 you know?

7 A After I left, I wouldn't know.

8 Q Okay. So in this overnight process where  
9 you did your comparison, brought it up to the  
10 attention of management, and then the next day they  
11 voted to stay with United, correct?

12 A Yes.

13 Q Okay.

14 A And everybody agreed that it was a -- not  
15 very nice ploy.

16 Q Well, what do you mean by that?

17 A I had other people in that room come up  
18 and say that that was just wrong, that he would  
19 undermine me in that fashion.

20 Q Who said that?

21 A Sylvia.

22 Q Okay. Anybody else?

23 A Barbara Mbss.

24 Q Okay. Anybody else?

25 A No.

1 A. Yes.

2 Q So after this meeting where he asked you  
3 to leave, then you said he didn't speak to you  
4 again, correct?

5 A. Very limited kind of conversation.

6 Q And then at some point in that time period  
7 you didn't report to him anymore, you were then  
8 reporting to Ms. Mbss, correct?

9 A. Correct.

10 Q Anything else that Mr. Rein did that you  
11 considered to be an adverse employment action  
12 related to your alleged protected activity?

13 A. Policies that I typically would write, he  
14 had somebody else. After I initiated them, he had  
15 someone else write them and finalize them

16 Q So when you say you "initiated them"  
17 meaning you drafted them?

18 A. I drafted them. I would go through the  
19 whole process normally, that was part of the  
20 function of my job, and then I would publish them

21 And he -- on the background screening  
22 and -- background screening and checks for licenses,  
23 that particular policy, he gave to Sylvia  
24 Smith-Torres and told me that he did not want me  
25 working on that policy anymore.

1 Q Okay. Which policy, the background check?

2 A Mm-hmm.

3 Q Okay. So he asked Ms. Smith -- what was  
4 Ms. Torres' position -- Smith-Torres' position?

5 A She was the director of the -- the social  
6 workers.

7 Q So she's responsible for all the social  
8 workers that are employed by ChildNet?

9 A Yes.

10 Q So you objected to the fact that the CEO  
11 asked her to complete the policies that you had  
12 initially drafted on background checks?

13 A I did not object.

14 Q Okay.

15 A I didn't understand.

16 Q Did he have the authority to do that?

17 A He had the authority to do whatever he  
18 wanted to do.

19 Q Well, we can't do whatever we want to do,  
20 but he certainly had the authority to decide who  
21 would finish up a policy, correct?

22 A Sure.

23 Q Okay. What else did Mr. Rein do that you  
24 consider to be an adverse employment action related  
25 to your alleged protected activity?



1 that they wanted to use the ADP as opposed to the  
2 HRIS system and make that a -- not only a payroll  
3 function but also an HR function. And it has very  
4 limited capabilities.

5 Q Well, that's what your company uses now,  
6 right? Your company uses ADP, doesn't it?

7 A For payroll, yes.

8 Q And I thought I asked you earlier about  
9 your function with regard to payroll and you said  
10 that HR's only function at that time was to input  
11 certain data into HRIS which was then shipped to the  
12 ChildNet finance department, correct?

13 A Correct.

14 Q So HR didn't run payroll, HR inputted  
15 certain information that the finance department of  
16 ChildNet used to run payroll, correct?

17 A Absolutely.

18 Q Okay. So what is it about this ADP  
19 proposal that you had objection to?

20 A Because he wanted the ADP to run the HR

21 Q All of HR?

22 A Mm-hmm

23 Q Okay. Did ADP ever run all of HR of  
24 ChildNet, to your knowledge?

25 A I have no idea.

1 are there HR staff at ChildNet today?

2 A. Yes.

3 Q Anything else -- so you said that  
4 Mr. Benitez would not meet with you or speak with  
5 you, yet he did ask you to meet with the ADP HR  
6 people to talk about the proposal.

7 A. He didn't ask me to leave, no.

8 Q You met with him there though, didn't you?

9 A. I met with the ADP people.

10 Q Who asked you to meet with the ADP people?

11 A. Marty Berkowitz.

12 Q Okay. So the other guy you said was --  
13 asked you to be there and participate in that  
14 process, correct?

15 A. Yes, but he didn't allow me to participate  
16 in the process.

17 Q Well, you were there at the meeting,  
18 correct?

19 A. I was at the meeting. I had no input  
20 whatsoever.

21 Q Let's go back to Mr. Benitez. What else,  
22 if anything, did Mr. Benitez do that you consider to  
23 be an adverse employment action?

24 A. The first meeting that I met with him he  
25 had asked questions of how this investigation

1 started and he was trying to understand what  
2 occurred. I shared with him that I had -- that it  
3 had started with me, and that I had shared that with  
4 Balitsaris, and that they had recommended that Wayne  
5 Black come in. And that was -- my impression at  
6 that time is that he was not happy and --

7 Q Not happy with what?

8 A Me.

9 Q How do you know that, did he say that?

10 A Because he was curse [sic]. He was short  
11 with me. And every time that I tried to meet with  
12 him after that, it was very limited.

13 Q Well, let's back up for a second. He was  
14 the new -- this is, you said, your first meeting  
15 with him, so I'm assuming this is when he was the  
16 new CEO, correct?

17 A Yes.

18 Q And it was probably about a year before  
19 when all the -- when the report was issued; is that  
20 about correct?

21 A I believe so.

22 Q Okay. And you were obviously part of that  
23 process?

24 A Yes.

25 Q Was there anything wrong with him meeting

1 you and asking you about the investigation and what  
2 happened?

3 A. Absolutely not.

4 Q Okay. You also said that you were the one  
5 that started everything. In fact, people reported  
6 the gift cards thing stolen or missing to you,  
7 correct?

8 A. Yes.

9 Q It wasn't like you uncovered it on your  
10 own, it was brought to your attention in your  
11 capacity as HR director, correct?

12 A. The certificates, yes.

13 Q Okay. And the stolen computer as well,  
14 correct?

15 A. Correct.

16 Q You didn't discover that on your own in  
17 doing inventory control or analysis, did you?

18 A. No.

19 Q And in your role as HR director and to the  
20 extent that you reported it both to your management  
21 and to the police is because that was your role,  
22 correct? Information was provided to you, you  
23 reported it; isn't that true?

24 A. Yes.

25 Q Okay. And your assessment or impression



1 that he was not happy with you in that meeting, is  
2 because you felt he was curt with you?

3 A. He was very short with me.

4 Q Did he say anything else that you consider  
5 to be inappropriate in that meeting?

6 A. No.

7 Q Okay. Did Mr. Benitez ever say anything  
8 that you consider to be inappropriate or  
9 demonstrating some type of hostility towards you  
10 because of any involvement in the investigation or  
11 any alleged protected activity?

12 A. During the time frame that we were  
13 reviewing the ADP, Barbara Mbss shared with me his  
14 comments.

15 Q Which were?

16 A. That I needed to accept the ADP system  
17 that we were going to go forward with it. That he  
18 did not want to see my analysis that showed that we  
19 were saving -- we were going to lose quite a bit of  
20 money by going with the ADP system. And he would  
21 not look at it.

22 Q And you agree that to the extent if  
23 ChildNet was going with ADP for payroll, you had no  
24 objection to that, correct? Not a bad idea,  
25 correct?

1 I am Leigh McPhail. How are you? So nice to meet  
2 you. And he immediately removed his hand from my  
3 hand in a very quick fashion and his whole demeanor  
4 completely changed.

5 Q Okay. Did he ever say or do anything  
6 hostile towards you?

7 A I consider that pretty hostile.

8 Q Anything else besides that?

9 A No.

10 Q Did he know that you had sought to have  
11 him not hired there?

12 A Based on his reaction, I would assume so.

13 Q Anything else that -- that he did?

14 A No.

15 Q Did any of the people that you've  
16 identified, and you've gone through your testimony,  
17 that you believe took adverse employment actions  
18 against you, did any of them ever say anything that  
19 you consider to be hostile or evidence some kind of  
20 animus against you because of your alleged protected  
21 activity?

22 A I think that Larry Rein definitely was  
23 very hostile towards me.

24 Q Well, what did he specifically say?

25 A Get out.

1 Q Okay. You're talking about the meeting  
2 where he asked you to leave?

3 A Yes.

4 Q Were you considered senior staff?

5 A Yes.

6 Q By whom?

7 A I was invited to that meeting which means  
8 that I was part of the senior staff.

9 Q Who invited you to the meeting? Did  
10 Mr. Rein invite you to the meeting?

11 A It was his meeting so I'm sure there was  
12 an e-mail that recommended that all of us show up.  
13 I don't recall specific --

14 Q In the organizational chart were you at  
15 the same level with all the other people that were  
16 there?

17 A Yes.

18 (Defendant's Exhibit 1 was marked for  
19 Identification by Mr. Loffredo.)

20 BY MR. LOFFREDO

21 Q Let me show you what we'll mark as Exhibit  
22 1. A copy to your counsel. I'll ask you to look at  
23 that.

24 MR. AMLONG Thank you.

25

1 BY MR. LOFFREDO

2 Q Do you recognize that document?

3 A Yes.

4 Q All right. Actually, before you look at  
5 that, you said -- you mentioned Mr. Rein. Is there  
6 anything else that any of the people that you've  
7 identified as allegedly taking adverse employment  
8 actions against you, that they said, that you feel  
9 demonstrated animus towards you because of your  
10 alleged protected activity?

11 A All of the things that I've already  
12 brought up to you.

13 Q Okay. That was my question, is there  
14 anything else?

15 A There may be but I don't recall at this  
16 time.

17 Q Okay. All right. Now please look at  
18 Exhibit 1 and I ask you if you recognize that?

19 A I do.

20 Q And what is that?

21 A It's the job description for the director  
22 of human resources.

23 Q Okay. And this is -- the job description  
24 is dated at the top July 1, 2003, and on the second  
25 page is that your name and signature?



1 A. Yes.

2 Q Dated April 14, 2006?

3 A. Yes.

4 Q Okay. That was a couple years after you  
5 started, correct?

6 A. Yes.

7 Q And you signed that to acknowledge that  
8 you believed these were your job duties and  
9 responsibilities?

10 A. Yes.

11 Q Okay. And did it accurately reflect what  
12 you were doing at ChildNet?

13 A. This is what you call an overview of the  
14 jobs that was supposed to happen in the HR  
15 department.

16 Q Sure.

17 A. It doesn't accurately reflect everything  
18 that I've done.

19 Q Okay. Fair enough.

20 MR. LOFFREDO Let's mark this as Exhibit

21 2.

22 (Defendant's Exhibit 2 was marked for  
23 Identification by Mr. Loffredo.)

24 BY MR. LOFFREDO:

25 Q I'm handing you Exhibit 2, a copy to your

1 you're reading? You've never seen this before?

2 A. I've never seen this before, no.

3 Q. Is there anything in here that is  
4 inconsistent with your understanding of events?

5 A. Well, I disagree with it.

6 Q. What do you disagree with?

7 A. I disagree that USI got the information to  
8 them late. I disagree with the fact that they did  
9 not provide us with a great savings. And that they  
10 have always been very good at what they do. So  
11 everything.

12 Q. Well, on the second to the last page of  
13 Exhibit 3, which is ChildNet 120 at the bottom  
14 right, it says, "Subsequent to this process, USI  
15 came back with a proposal with \$100,000 savings with  
16 United Healthcare, our preferred provider."

17 There was some activity before that that  
18 then brought USI back with a cheaper proposal,  
19 correct?

20 A. Yes, that's where Marty had shared with us  
21 what -- what Edify had brought forward which was not  
22 the same benefit, it was at 80 percent rather than  
23 at 100 percent coverage.

24 Q. Okay. The Edify proposal?

25 A. Yes.

1 Q Okay.

2 A And so it wasn't an apples to apples  
3 comparison it was an orange to apple comparison.  
4 And what I had done is -- it wasn't -- it was the  
5 same proposal as what Edify had brought forward.  
6 But since at no time did they provide USI with this  
7 information until we got the e-mail the night  
8 before --

9 Q Mm-hmm

10 A -- that Edify was going to provide us with  
11 80 percent rather than 100 percent. So what we did  
12 is we put it into an apples and apples comparison so  
13 that we could actually see how much money we were  
14 saving.

15 Q Okay. And so what's your conclusion  
16 based -- after reading this e-mail?

17 A No one ever asked USI to do an 80 percent  
18 proposal, they had requested a 100 percent proposal.

19 Q But did -- but did ChildNet want  
20 80 percent coverage or 100 percent coverage?

21 A Well, I don't think that -- when Emilio  
22 met with USI he wanted 100 percent coverage, that's  
23 what he requested.

24 Q And that was the coverage that was in  
25 place at the time that this was all going on, the

1 letter dated April 13, 2007 addressed to  
2 Ms. Virginia L. Miller, Chairman of the Board at  
3 ChildNet from Charles Caulkins of Fisher & Phillips,  
4 Bates stamped 118 and 119; do you see that?

5 A. Yes.

6 Q And that's transmitting the executive  
7 summary to -- from counsel to Ms. Miller. And was  
8 Fisher & Phillips counsel to ChildNet?

9 A. Yes.

10 Q And then I believe the last document is  
11 dated one -- McPhail 0128 through 135, do you see  
12 that? And that's a letter from Jack Mbss who was  
13 the district administrator for DCF to Howard Bakalar  
14 acting ChildNet chairman and Larry Rein acting  
15 president/CEO of ChildNet; do you see that?

16 A. Yes.

17 Q Okay. And have you seen that letter  
18 before?

19 A. Yes.

20 Q What is this letter?

21 A. This is a letter notifying them that they  
22 are put on notice that they'll be closed down if  
23 they don't respond to everything.

24 Q And did ChildNet respond?

25 A. They did.



1 Q And was reactivated?

2 A Yes.

3 Q Okay. Let me ask you to go back now to  
4 page 6 of 12, and specifically Interrogatory Number  
5 6 on this page. I'll read the interrogatory again  
6 and the answer.

7 "Please specify each and every act and/or  
8 omission by the defendant that you contend was an  
9 act of gross mismanagement, malfeasance,  
10 misfeasance, gross waste of public funds or gross  
11 neglect of duty.

12 Please specify the acts and/or omissions,  
13 number one. Number two, the date, time and place  
14 that the acts and/or omissions occurred. Three, the  
15 individual, by name and title of position, that  
16 committed the acts and/or omissions. And, four, any  
17 witnesses, by name and title of position, to the  
18 acts and/or omissions."

19 And then your response says, "Please see  
20 plaintiff's response Interrogatory Number 5 which is  
21 adopted as if fully set forth in response to this  
22 interrogatory."

23 That's the one we just talked about with  
24 all the documents attached, correct?

25 A Yes.

1           A.    I believe I have shared with you the  
2 information that today I remember. I feel pretty  
3 confident that the majority of it has been discussed  
4 or put in the interrogatories.

5           MR. LOFFREDO: All right. Well, I have no  
6 further questions at this time.

7           THE VIDEOGRAPHER: Stand by to go off  
8 media unit 3. Going off at 4:41 p.m.

9           (A brief break was taken.)

10          THE VIDEOGRAPHER: We're now back on media  
11 unit number 3. The time back on is 4:50 p.m.

12                           CROSS- EXAM NATION

13          BY MR. AMONG

14          Q    Ms. McPhail, when you began working at  
15 ChildNet as the director of human resources, did  
16 your job responsibilities include security and  
17 oversight?

18          A.    Yes.

19          Q    When you brought to the attention of  
20 Ms. Moss and Mr. Balitsaris that there had been a  
21 theft of gift cards, were you asked to participate  
22 in that investigation?

23          A.    I was, yes.

24          Q    After you got into the investigation, did  
25 you learn that there was more going on than simply

1 the theft of gift cards?

2 A. Yes.

3 Q What -- what reaction did Ms. Mbss have as  
4 the investigation broadened, if any?

5 A. Barbara Mbss was appalled by most of the  
6 things that were going on. And then at one point  
7 her and I had a conversation that she was very  
8 concerned that the investigation would cause  
9 problems for ChildNet and that -- and I shared with  
10 her that I thought if Peter Balitsaris didn't  
11 terminate the CFO, that ChildNet would be in a great  
12 deal of trouble because it would need to be  
13 reported.

14 Q Did Ms. Mbss ever tell you that you were  
15 overstepping your authority?

16 A. She did.

17 Q Tell us about that conversation, please.  
18 Was this the same conversation?

19 A. No, no. After the investigative report  
20 was given to Peter Balitsaris and Barbara Mbss, they  
21 had another meeting with the Abels who are the  
22 internal auditors.

23 Q The Abels?

24 A. The Abels.

25 Q Is that people's names?

1           A.     That's two people, yeah. That's a married  
2 couple who did the internal auditing for ChildNet.

3                 I had thought that the meeting that was  
4 set up that I was to attend was to share all of the  
5 information from the investigation with them and  
6 when I started telling them what was going on I was  
7 originally told to back off by Peter Balitsaris.  
8 And later I got a phone call from Barbara Moss, I  
9 believe it was the same day, telling me that I was  
10 way out of bounds and she literally was yelling at  
11 me, telling me that I needed to back off.

12                And, actually, there's an e-mail that she  
13 states in her e-mail to back off. That was two,  
14 actually, two different conversations.

15           Q     Did she use the phrase "cool your jets"?

16           A     Yes.

17           Q     Was that in the e-mail?

18           A     In the e-mail she said, Cool your jets.

19           Q     When Mr. Black and Mr. Mazzilli first  
20 issued their report, did Charles Caulkins, the labor  
21 employment lawyer for ChildNet, instruct Mr. Black  
22 not to distribute the report to the board of  
23 directors?

24           A     I believe so.

25           Q     Do you know why?



1 would have a record of their time that they arrived  
2 and the time that they were finished for work each  
3 day.

4 Q Did it save any money to not implement it?

5 A Yes -- no, I'm sorry. No, it did not.

6 Yeah, they -- the -- no.

7 Ask the question again. To make sure I  
8 understood what you said.

9 Q Did ChildNet save any money by not  
10 implementing the time sheet program?

11 A No, they actually lost money because we  
12 had purchased the iVantage system to include that  
13 particular module, which was an additional charge,  
14 so...

15 Q You had already paid that?

16 A Yes.

17 Q Did Mr. Rein ever accuse you of placing  
18 obstacles in the way of hiring new personnel?

19 A Yes.

20 Q How were you placing obstacles?

21 A Because I did the background screening and  
22 the drug testing, and he felt that he should be able  
23 to hire somebody immediately without having to go  
24 through that review.

25 Q Did they stop doing drug testing at that

1     franchise?

2           A.     No, that was a requirement to the state to  
3     do those things, but he did remove me from writing  
4     the policy and updating the policy.

5           Q.     When Mr. Berkowitz and Mr. Benitez were  
6     proposing to switch to ADP, did you do a cost  
7     benefit analysis?

8           A.     I did.

9           Q.     And what did it show concerning whether  
10    there would be a savings by keeping iVantage?

11          A.     I don't recall the actual amount, but it  
12    was thousands of dollars to save -- that we would  
13    have saved, not to mention that the cost or -- the  
14    iVantage system alone was already a purchased  
15    product that we had paid for the implementation,  
16    paid for the product. It was owned by us, where the  
17    ADP system is virtual. If we were to lose that, we  
18    would lose all of our information.

19                 So there was cost associated with keeping  
20    it and maintaining it over the years and ultimately  
21    it was thousands of dollars cheaper to stay with the  
22    iVantage system. Hundreds of thousands of dollars,  
23    if I recall.

24          Q.     How much have you paid for -- how much  
25    have you paid for the iVantage system?

1 A. I believe it was around \$80,000.

2 Q Were you as the director of human  
3 resources the ChildNet executive who most used the  
4 iVantage system?

5 A. Yes.

6 Q What was your opinion of its  
7 functionality?

8 A. It was excellent. It provided every  
9 aspect of -- it was able to help us to ensure  
10 compliance for the state.

11 Q You testified earlier that you -- that  
12 your current employer is migrating away from ADP, so  
13 you had -- you were familiar with ADP as well?

14 A. Yes.

15 Q How do you compare the two?

16 A. There's no comparison. The functionality  
17 of ADP is very limited in the capacity of human  
18 resources. You can't put performance appraisals in  
19 there. You cannot alert individual supervisors that  
20 a license is going to expire. There is no place to  
21 put drug testing so that we could manage all of the  
22 different things that are required by the state in  
23 order to comply with all the social worker  
24 requirements.

25 Q What sort of social worker requirements do

IN THE CIRCUIT COURT OF THE  
SEVENTEENTH JUDICIAL CIRCUIT  
IN AND FOR BROWARD COUNTY,  
FLORIDA

CASE NO. 08-60736

R. LEIGH MCPHAIL,

PLAINTIFF,

VS.

CHILDNET, INC., A FLORIDA  
NOT-FOR-PROFIT CORPORATION,

DEFENDANT.

---

GRAY ROBINSON  
401 EAST LAS OLAS BOULEVARD  
LAS OLAS CITY CENTRE - 401  
FORT LAUDERDALE, FLORIDA  
MONDAY, NOVEMBER 25, 2013  
2:15 P. M.

DEPOSITION OF EMILIO BENITEZ

TAKEN BEFORE RHONDA BONNER, REGISTERED

PROFESSIONAL REPORTER, FLORIDA PROFESSIONAL REPORTER,

NOTARY PUBLIC IN AND FOR THE STATE OF FLORIDA AT LARGE,

PURSUANT TO PLAINTIFF'S NOTICE OF TAKING DEPOSITION.

Benitez, Emilio - 131125

**ATTACHMENT 2**



1 A. NORTH SURF ROAD.

2 Q SURF, S-U-R-F?

3 A. YES.

4 Q AND WHAT' S YOUR DATE OF BI RTH?

5 A. JULY 14, 1958.

6 Q WOULD YOU PLEASE TAKE ME BRI EFLY THROUGH YOUR  
7 EDUCATI ONAL AND PROFESSI ONAL BACKGROUND.

8 A. OKAY.

9 I HAVE A JURI S DOCTORATE FROM THE UNI VERSI TY OF  
10 FLORI DA. I ALSO HAVE A CERTI FI CATE OF I NTERNATI ONAL LAW  
11 FROM ESCUELA LI BRE DE DERECHO I N MEXI CO CI TY.

12 MY EDUCATI ONAL BACKGROUND -- MY PROFESSI ONAL  
13 BACKGROUND --

14 Q YOUR BACHELOR' S DEGREE?

15 A. I ' M SORRY. A BACHELOR' S DEGREE I N LATI N AMERI CAN  
16 STUDI ES FROM TULANE UNI VERSI TY.

17 Q OKAY.

18 A. PROFESSI ONALLY I BECAME A LAWYER I N -- LI CENSED  
19 TO PRACTI CE I N 1984. STARTED PRACTI CI NG AT LEGAL SERVI CES  
20 OF GREATER M AM , THEN WENT TO THE PUBLI C DEFENDER S  
21 OFFI CE I N BROWARD SOMETI ME I N 1985; WORKED THERE UNTI L  
22 1988.

23 I STARTED MY OWN LAW PRACTI CE AND CONTI NUED I N MY  
24 OWN LAW PRACTI CE UNTI L I TOOK THE JOB AT CHI LDNET I N  
25 JANUARY OF 2008.

1 IN JANUARY OF 2008.

2 Q WERE YOU ON THE BOARD AT THE TIME OF THE FBI  
3 RAID?

4 A NO, SIR. I LEFT THE BOARD OF CHILDNET SOME TIME  
5 IN 2006.

6 Q WHAT DID YOU KNOW ABOUT THE FBI RAID?

7 A NOT REALLY MUCH. I WAS THERE FOR THE PUBLIC  
8 BOARD MEETING WHERE PETER BALITSARIS WAS DISMISSED AND THE  
9 CFO, WHOSE NAME -- PETER GREENHOUGH, I THINK -- WERE  
10 DISMISSED. AND I HAD SOME COMMUNICATIONS WITH THE BOARD  
11 CHAIR AT THE TIME, GINNI MILLER, AS TO WHETHER OR NOT SHE  
12 WAS GOING TO RESIGN OR REMAIN AS BOARD CHAIR.

13 Q AND SHE SAID?

14 A SHE WAS GOING TO RESIGN IF THE BOARD VOTED TO  
15 TERMINATE PETER BALITSARIS, AND SHE DID.

16 Q WHAT WAS THE SALARY WHEN YOU BEGAN?

17 A SAY AGAIN?

18 Q WHEN YOU BEGAN IN JANUARY 2008, WHAT WAS THE  
19 SALARY FOR PRESIDENT/CEO?

20 WERE YOU BOTH PRESIDENT AND CEO AT THE TIME?

21 A YES, SIR.

22 Q OKAY.

23 A 175.

24 Q WHAT IS IT NOW?

25 A 210.

1 Q WHAT WAS THE BUDGET OF CHILDNET IN -- WHEN DOES  
2 YOUR BUDGET YEAR RUN?

3 A IT RUNS THE SAME AS THE STATE GOVERNMENT, FROM  
4 JULY 1ST TO JUNE 30TH.

5 Q WHAT WAS THE BUDGET YOU CAME INTO?

6 A AT THE TIME I BELIEVE IT WAS 67 OR \$68 MILLION A  
7 YEAR.

8 Q AND WHAT WAS THE SOURCE OF THAT MONEY?

9 A 99 PERCENT, 98 PERCENT FROM THE STATE OF FLORIDA.

10 Q IS IT A FEE FOR SERVICES ARRANGEMENT?

11 A YES, PRETTY MUCH.

12 THE CONTRACT, IT WAS ON A THREE-YEAR CYCLE. WHEN  
13 I CAME ON BOARD AND THE CONTRACT WAS UP AGAIN, I  
14 RENEGOTIATED THE CONTRACT WITH THE DEPARTMENT AND EXTENDED  
15 THAT TO A FIVE-YEAR, PLUS A RENEWABLE FIVE YEARS.

16 Q WHAT DOES THE STATE OF FLORIDA PAY YOU FOR DOING?

17 A WE ACTUALLY MANAGE THE WHOLE FOSTER CARE SYSTEM  
18 FOR THE DEPARTMENT OF CHILDREN AND FAMILIES IN BROWARD,  
19 AND DURING MY TENURE, WE EXPANDED TO PALM BEACH AS WELL.

20 Q WHAT'S THE CURRENT BUDGET?

21 A THE CURRENT BUDGET FOR BROWARD COUNTY IS  
22 \$62 MILLION; FOR PALM BEACH IT'S, I BELIEVE, \$37 MILLION.

23 Q AND WHEN YOU SAY THAT YOU MANAGED THE FOSTER CARE  
24 SYSTEM, WHAT'S THAT MEAN?

25 A WELL, WHEN CHILDREN ARE SUSPECTED OF BEING

1 ABUSED, ABANDONED, OR NEGLECTED, THERE'S USUALLY A CALL  
2 PLACED TO THE FLORIDA ABUSE HOTLINE. ONCE THAT CALL IS  
3 PROCESSED, A REFERRAL IS SENT OUT. IF IT WERE IN BROWARD  
4 COUNTY, TO THE BROWARD SHERIFF'S OFFICE; IF IT'S IN PALM  
5 BEACH COUNTY, TO THE DEPARTMENT OF CHILDREN AND FAMILIES  
6 CHILD PROTECTION INVESTIGATIVE TEAM, THEN THEY CONDUCT AN  
7 INVESTIGATION AS TO THE VALIDITY OF THE ALLEGATIONS OF  
8 ABUSE, ABANDONMENT, OR NEGLECT.

9 IF THE INVESTIGATORS DETERMINE THAT THE CHILD IS  
10 REMOVED, THEN THEY'RE PLACED IN THE CUSTODY OF CHILDNET,  
11 WHO THEN PLACES THEM EITHER WITH AN APPROVED RELATIVE OR  
12 NONRELATIVES, FOSTER HOME, OR SOME OTHER GROUP SETTING,  
13 DEPENDING ON THE NEEDS OF THE CHILD AND THE APPROVAL OF  
14 THE COURT.

15 THEN YOU BEGIN A DEPENDENCY PROCEEDING IN COURT  
16 FOR HOWEVER LONG THAT TAKES, AND IF IT IS DETERMINED THAT  
17 THE CHILDREN ARE SAFE TO BE REUNITED WITH THEIR FAMILIES,  
18 THEN THEY'RE DONE. IF NOT, THEN THE COURT MAKES A  
19 DETERMINATION AS TO WHETHER THE PARENTAL RIGHTS OF THE  
20 PARENTS ARE TO BE TERMINATED; AND IF THEY DO, THEN THE  
21 CHILD IS PLACED UP FOR ADOPTION, AND AGAIN, CHILDNET WILL  
22 CONTINUE WITH THE ADOPTION SERVICES UNTIL THAT CHILD IS  
23 ADOPTED.

24 NOW THAT PROCESS IS ALSO EXTENDED TO YOUTH AGING  
25 OUT OF FOSTER CARE UP TO AGE 22 WHERE THEY CAN REMAIN IN



1 THE SYSTEM RECEIVING A STIPEND IF SEVERAL CONDITIONS ARE  
2 MET, WHICH INCLUDES CONTINUING IN SCHOOL, AND CHILDNET  
3 ALSO MANAGES THAT PROCESS. SO, IN ESSENCE, CHILDNET  
4 MANAGES THE WHOLE DEPENDENCY PROCESS FOR THE DEPARTMENT OF  
5 CHILDREN AND FAMILIES.

6 Q IS CHILDNET PAID PER CHILD?

7 A. NO, SIR.

8 Q DOES THE VOLUME OF CHILDREN HAVE ANYTHING TO DO  
9 WITH THE AMOUNT?

10 A. SADLY, NO, SIR.

11 Q SO THE STATE JUST GIVES YOU X DOLLARS PER YEAR?

12 A. YES.

13 AND AS I STARTED -- SAID, WHEN WE STARTED WE HAD  
14 \$67 MILLION. AND THROUGH BUDGET CUTS AND EQUITY  
15 REALLOCATION LAW THAT TAKES FROM BETTER FUNDED AREAS TO  
16 LESS FUNDED AREAS, WE HAVE LOST ADDITIONAL FUNDING OVER  
17 THE LAST FEW YEARS. SO ALL THE WORK THAT WENT INTO --  
18 WITH THE CHILD ADVOCATE COMMUNITY HERE OF GOOD ATTORNEYS  
19 IN THIS COMMUNITY THAT'S SUED THE DEPARTMENT IN 1999 TO  
20 RAISE THE LEVEL OF FUNDING IS FOR NOT NOW BECAUSE IT'S  
21 BEING REALLOCATED SOMEWHERE ELSE.

22 Q JUST LIKE THE EQUALIZATION IN SCHOOL FUNDING?

23 A. YOU KNOW SOME PEOPLE HAVE MADE THAT COMPARISON.  
24 I DON'T LIKE THE COMPARISON BECAUSE I DON'T THINK THEY'RE  
25 THE SAME NEEDS, SAY, HERE IN BROWARD COUNTY AS THERE ARE

1 IN MARI ON COUNTY OR BAKER COUNTY, SO NO. JUST SAYING THAT  
2 YOU ONLY SHOULD HAVE 20 CHILDREN IN A CLASS, THAT MAY  
3 APPLY MORE UNIVERSALLY, BUT IN URBAN COMMUNITIES AS  
4 OPPOSED TO RURAL COMMUNITIES, IT COSTS MORE TO DO  
5 EVERYTHING

6 Q DO YOU GET ANY FUNDS FROM BROWARD COUNTY?

7 A NO, SIR.

8 Q HAS IT EVER RECEIVED ANY FUNDS FROM BROWARD  
9 COUNTY?

10 A I DON'T KNOW THAT PRIOR TO ME BECOMING CEO.  
11 CERTAINLY AS BOARD CHAIR, I DON'T RECALL THAT. SINCE I'VE  
12 BEEN CEO, WE'VE NOT RECEIVED ANY FUNDING FROM BROWARD  
13 COUNTY GOVERNMENT THAT I RECALL.

14 Q DID YOU DISCUSS THE INVESTIGATION THAT PROCEEDED  
15 MR. BALITSARI'S TERMINATION WITH ANYONE?

16 A YES.

17 Q WITH WHOM?

18 A I DISCUSSED IT WITH THE BOARD SECRETARY HOWARD  
19 BAKALAR. I DISCUSSED IT WITH GINNI MILLER. I DISCUSSED  
20 IT WITH -- OH, MY GOD, THE NAME ESCAPES ME RIGHT NOW --  
21 LENNY. HE WAS A BOARD MEMBER. I CAN'T REMEMBER HIS LAST  
22 NAME RIGHT NOW

23 Q TELL ME ABOUT YOUR DISCUSSION WITH  
24 MR. BALITSARI.

25 A I NEVER SPOKE TO PETER BALITSARI ABOUT IT; I

1 SAI D I SPOKE WITH BAKALAR.

2 Q I'M SORRY, WITH BAKALAR.

3 TELL ME ABOUT YOUR CONVERSATION WITH MR. BAKALAR.

4 A. I CAN'T REMEMBER THE DETAILS. IT WAS MORE OF  
5 WHAT THE INVESTIGATION WAS FOCUSING ON; SOME GIFT CARDS,  
6 SOME HIRING OF SOME EMPLOYEES THAT HAD SOME CRIMINAL  
7 BACKGROUND, AND WHAT IMPLICATION DOES THAT HAVE. STUFF  
8 LIKE THAT.

9 Q HAVE YOU READ THE INVESTIGATIVE REPORT?

10 A. I HAVE.

11 Q WHEN?

12 A. OH, MY. I THINK THE DAY OF THAT, THE BOARD  
13 MEETING.

14 Q THE APRIL 2007 BOARD MEETING?

15 A. I BELIEVE SO. I DON'T REMEMBER THE DATE. IT WAS  
16 SOMETIME IN APRIL.

17 Q WELL, THE FOCUS WAS A LOT MORE THAN SIMPLY GIFT  
18 CARDS AND CRIMINAL BACKGROUND, RIGHT?

19 A. LIKE I SAID, I DON'T RECALL THE DETAILS, BUT, I  
20 MEAN, I WASN'T A BOARD MEMBER, SO IT REALLY DIDN'T IMPACT  
21 ME THAT MUCH.

22 Q HAVE YOU READ THE INVESTIGATIVE REPORT SINCE  
23 THEN?

24 A. NO.

25 Q WHAT ELSE, IF ANYTHING, DID YOU DISCUSS WITH

1 Q WHAT, IF ANYTHING, DID YOU KNOW ABOUT THE HR  
2 SECURITY SYSTEM?

3 A MOSTLY WHAT MR. BERKOWITZ ADVISED AND THEN  
4 FOLLOWED UP BY MR. PAREKH.

5 Q BY MR. WHO?

6 A PAREKH.

7 Q OKAY. WHAT DID MR. BERKOWITZ ADVISE ABOUT THE  
8 COMPUTER SYSTEM?

9 A WELL, AS --

10 Q SPECIFICALLY, THE HR COMPUTER SYSTEM?

11 A AS I RECALL, THERE WAS AN INEFFICIENCY IN THAT  
12 OUR PAYROLL WAS DONE BY ONE SYSTEM AND OUR HR WAS DONE BY  
13 ANOTHER SYSTEM AND THAT PERHAPS THERE WAS A MORE  
14 EFFICIENT AND COST-EFFECTIVE WAY OF DOING THAT.

15 Q WHAT WERE THE PROBLEMS WITH HAVING HR AND PAYROLL  
16 BEING ON DIFFERENT SYSTEMS?

17 A AS I RECALL FROM MR. BERKOWITZ, THERE WAS SOME  
18 DIFFICULTY WITH PAYROLL THAT NEEDED TO BE -- IT NEEDED TO  
19 CORRESPOND WITH HR AS FAR AS EMPLOYEES AT THE TIME AND  
20 THIS, THAT, AND THE OTHER FROM HIS PERSPECTIVE, IT WOULD  
21 BE MORE EFFICIENT AND MORE COST EFFECTIVE TO HAVE A SYSTEM  
22 THAT DID BOTH.

23 Q THE NEXT PARAGRAPH, YOU SAY: FROM THE OUTSET YOU  
24 FOUND MS. MCPHAIL TO BE RESISTANT TO ANY TYPE OF  
25 MEANINGFUL EVALUATION OF THE ACTIVITIES OF THE HUMAN



1 RESOURCES DEPARTMENT. SHE WAS NOT COOPERATIVE OR  
2 UNDERSTANDING DURING THESE EVALUATIONS.

3 HOW WAS SHE -- HOW DID SHE DEMONSTRATE HER  
4 RESISTANCE TO ANY TYPE OF MEANINGFUL EVALUATION?

5 A. WELL, LEIGH, FROM -- AND I ONLY WORKED WITH HER  
6 FOR A FEW MONTHS REALLY -- I BELIEVE SHE WANTED A GREATER  
7 ROLE. SHE WANTED TO BE ON THE EXECUTIVE TEAM. SHE WANTED  
8 TO PARTICIPATE IN EXECUTIVE MEETINGS. SHE HAD WHAT I  
9 WOULD CALL A POOR RELATIONSHIP WITH HER DIRECT SUPERVISOR  
10 AND OTHER MEMBERS OF THE EXECUTIVE TEAM, WHICH I FOUND  
11 TROUBLING.

12 Q. WHO WAS HER DIRECT SUPERVISOR?

13 A. BARBARA MOSS.

14 Q. TELL ME WHAT YOU OBSERVED THAT MAKES YOU SAY SHE  
15 HAD A POOR RELATIONSHIP WITH MS. MOSS?

16 A. CONFRONTATIONAL. IT WAS MORE OF JUST A  
17 PERSONALITY THING. I DON'T KNOW IF IT WAS A PERSONALITY  
18 THING WITH BARBARA DIRECTLY, BUT IT ALSO WENT ON WITH  
19 MARTY BERKOWITZ, WHICH GOT TO THE POINT THAT I FINALLY HAD  
20 TO STEP IN AND SAY, THIS IS INAPPROPRIATE BEHAVIOR. I  
21 ENCOURAGE PEOPLE TO HAVE DIFFERENT OPINIONS AND HAVE  
22 DIFFERENT DISCUSSIONS, BUT NOT TO THE POINT THAT IT'S  
23 RUDE.

24 Q. WHAT DID YOU OBSERVE MS. MCPHAIL DO THAT YOU  
25 THOUGHT THAT WAS RUDE?

1 A. JUST E-MAIL EXCHANGES BETWEEN HER AND ONE OF HER  
2 DIRECT SUPERVISORS, THE CHIEF FINANCIAL OFFICER OF THE  
3 COMPANY, AND IT WAS JUST VERY INAPPROPRIATE. I FINALLY  
4 STEPPED IN AND SAID, LOOK, THIS IS NOT ACCEPTABLE.

5 IN ADDITION TO -- I MEAN, AGAIN, I DON'T KNOW IF  
6 IT WAS MORE OF A PERSONALITY THING WITH BARBARA, BUT  
7 OCCASIONALLY LEIGH WAS LATE, WOULD NOT COME IN. ONE TIME  
8 SHE BROUGHT HER DOGS TO WORK.

9 Q. I'M SORRY. LEIGH WOULD NOT COME IN?

10 A. WOULD NOT COME IN TO WORK. AND BARBARA WAS  
11 COMPLAINING YOU KNOW BRINGING YOUR DOGS TO WORK?

12 Q. HOW MANY TIMES DID SHE BRING HER DOGS TO WORK?

13 A. THAT I OBSERVED, ONCE, BUT THAT WAS A CONCERN  
14 THAT HER SUPERVISOR HAD.

15 Q. OKAY.

16 HOW MANY DOGS DID SHE BRING IN?

17 A. I DON'T KNOW I ONLY SAW HER WITH ONE DOG ONE  
18 TIME AT WORK, WALKING THE DOG I DON'T KNOW IF SHE HAD  
19 MORE THAN ONE OR NOT. I REMEMBER SAYING TO HER, I DON'T  
20 BRING -- I HAVE TWO DOGS, I DON'T BRING MY DOGS TO WORK.  
21 I DON'T UNDERSTAND WHY PEOPLE BRING THEIR DOG TO WORK.

22 Q. DID SHE TELL YOU WHY SHE BROUGHT HER DOG TO WORK?

23 A. SOME ANXIETY THING, ISSUE WITH THE DOG

24 Q. SO DID YOU TELL HER NOT TO BRING HER DOG TO WORK  
25 ANYMORE?

1 A. I ASKED BARBARA IF IT WAS OKAY WITH HER AND  
2 BARBARA INDICATED IT WAS NOT. I JUST FOUND IT ODD.

3 Q DID ANYBODY SAY, DON'T BRING YOUR DOGS TO WORK  
4 ANYMORE?

5 A. I DON'T KNOW

6 Q DID SHE EVER BRING THEM TO WORK AGAIN?

7 A. I REALLY DIDN'T HAVE A LOT OF DIRECT CONTACT WITH  
8 LEIGH, BUT I DON'T RECALL SEEING THEM AGAIN.

9 Q WHAT SORT OF EVALUATIONS WERE BEING DONE, THE  
10 ACTIVITIES IN THE HUMAN RESOURCES DEPARTMENT?

11 A. I GUESS IN REFERENCE TO WHAT MARTY WAS  
12 EVALUATING, WHETHER IT WAS BEST TO HAVE ONE COMPREHENSIVE  
13 SYSTEM THAT WAS WITH PAYROLL AND HUMAN RESOURCES.

14 Q PARAGRAPH 10, YOU SAY, "FROM THE OUTSET, I FOUND  
15 MS. MCPHAIL TO BE RESISTANT TO ANY TYPE OF MEANINGFUL  
16 EVALUATION OF THE ACTIVITIES OF THE HUMAN RESOURCES  
17 DEPARTMENT. SHE WAS NOT COOPERATIVE OR UNDERSTANDING  
18 DURING THESE EVALUATIONS."

19 SO THE ONLY EVALUATION WAS WHETHER OR NOT THERE  
20 SHOULD BE A SWITCH TO THE SAME COMPUTER SYSTEM IN PAYROLL  
21 AND HR?

22 A. NO. IT WAS IN REFERENCE ALSO TO THE HEALTH  
23 INSURANCE PLAN. IT WAS IN REFERENCE TO HAVING A PLAN IN  
24 PLACE AS TO REDUCING STAFF. THAT WAS REALLY ALL HEADED BY  
25 MR. BERKOWITZ.

1 WAS NECESSARY. ALSO, I WROTE MS. MCPHAIL AN E-MAIL  
2 CALLING HER ATTENTION TO WHAT I THOUGHT WAS INAPPROPRIATE  
3 TONE IN HER -- IN THE WAY SHE ADDRESSED A SUPERVISOR, THE  
4 CHIEF FINANCIAL OFFICER OF THE COMPANY. THAT WAS ALL IN  
5 REFERENCE TO THIS ONGOING DIFFERENCES OF OPINION ON  
6 WHAT -- ON HOW -- WHAT WAS NECESSARY FROM THE PROSPECTIVE  
7 OF WHAT MR. BERKOWITZ THOUGHT.

8 Q OKAY.

9 LOOK AT EXHIBIT 1 TO YOUR AFFIDAVIT, THE NEXT  
10 PARAGRAPH YOU STATE, "ON SEVERAL OCCASIONS I HAD TO  
11 COUNSEL HER ON THE TONE OF HER COMMUNICATION WITH OTHER  
12 CHILDNET MANAGERS AND EXECUTIVE TEAM MANAGERS. SEE, FOR  
13 EXAMPLE, FEBRUARY 18, 2008, E-MAIL CONCERNING HER  
14 COMMUNICATION WITH CHILDNET CFO MARTY BERKOWITZ, ATTACHED  
15 HERE TO AS EXHIBIT 1."

16 IS THIS FEBRUARY -- LOOKS LIKE A FEBRUARY 15, 16,  
17 E-MAIL STRING?

18 A. UH-HUH.

19 Q IS THAT WHAT YOU'RE REFERRING TO?

20 A. THAT IS CORRECT.

21 Q AND IT'S ONLY ONE PAGE, CORRECT?

22 A. THAT'S CORRECT.

23 Q HAVE YOU ATTACHED TO THE E-MAIL WHAT YOU THOUGHT  
24 WAS INAPPROPRIATE?

25 A. NO, IT DOESN'T APPEAR IT'S ATTACHED TO IT.



1 Q DO YOU RECALL WHAT E-MAIL THAT WAS?

2 A IT WAS A STRING OF E-MAILS GOING BACK AND FORTH  
3 FROM LEIGH TO MARTY, MARTY TO LEIGH, WHERE MARTY MADE A  
4 DECISION AND LEIGH DIDN'T AGREE WITH THE DECISION. THE  
5 DETAILS OF IT I CAN'T RECALL. WHAT I DO RECALL IS THE  
6 TONE. YOU DON'T NEED TO EXPRESS THINGS IN SUCH A TONE.  
7 AT LEAST THAT'S MY OPINION.

8 (PLAINTIFF'S EXHIBIT 2 WAS MARKED FOR  
9 IDENTIFICATION.)

10 BY MR. AMLONG

11 Q LET ME SHOW YOU WHAT HAS BEEN MARKED AS EXHIBIT 2  
12 TO THIS DEPOSITION AND ASK YOU IF THIS IS THE E-MAIL  
13 STRING YOU REFERRED TO.

14 (PAUSE IN PROCEEDINGS.)

15 A YES.

16 Q WOULD YOU PLEASE POINT OUT TO ME WHAT'S RUDE  
17 ABOUT THIS.

18 A I DIDN'T SAY ANYTHING SPECIFICALLY WAS RUDE.  
19 WHAT I SAID IS THE TONE, I BELIEVE, IS RUDE AND  
20 INAPPROPRIATE.

21 Q WHAT'S RUDE AND INAPPROPRIATE?

22 A THE TONE OF IT. WHY WOULD YOU SET UP A COMMITTEE  
23 IF YOU HAD NO INTENTIONS OF HEARING THEM OUT AND MAKING A  
24 GROUP DECISION? WHY IS THAT LEIGH'S DECISION OR PLACE TO  
25 COMMENT? HER --

1 Q I'M SORRY.

2 A HER POSITION AS HR DIRECTOR IS TO PROVIDE INPUT  
3 AND RECOMMENDATIONS AS TO THE SYSTEM THAT SHOULD OR  
4 SHOULDN'T BE USED. THAT WAS ENCOURAGED, BUT ONCE  
5 MR. BERKOWITZ MADE A DECISION THAT HE WAS GOING TO GO IN A  
6 DIFFERENT DIRECTION, HAVING CONSIDERED THESE  
7 RECOMMENDATIONS OR NOT, THAT SHOULD BE THE END OF THE  
8 STORY, NOT GOING BACK AND FORTH. THIS IS NOT A DECISION  
9 FOR THE BOARD TO MAKE. WHY?

10 "I HOPE THAT YOU DON'T THINK YOU CAN CONVINCE ME  
11 TO AGREE WITH YOU WHEN YOU STATE YOU HAVE CONSULTANTS."

12 THE TONE OF THAT SENTENCE IN AND OF ITSELF,  
13 TALKING TO THE CHIEF FINANCIAL OFFICER OF THE COMPANY, I  
14 BELIEVE, IS RUDE.

15 Q ANYTHING ELSE IN THERE THAT YOU BELIEVE IS RUDE?

16 A THE WHOLE TONE OF THE E-MAIL IS RUDE AND  
17 INAPPROPRIATE. MR. BERKOWITZ WAS THE CHIEF FINANCIAL  
18 OFFICER. HE BELIEVED THAT HAVING A SYSTEM THAT COULD  
19 HANDLE BOTH THE PAYROLL AND THE HR SOLUTIONS OF IT WAS THE  
20 BEST WAY FOR CHILDNET TO GO.

21 Q YOU SAID THAT SHE WAS RESISTANT TO ANY MEANINGFUL  
22 EVALUATION OF HEALTH INSURANCE PLANS.

23 HOW WAS SHE RESISTANT TO ANY MEANINGFUL  
24 EVALUATIONS OF HEALTH INSURANCE PLANS?

25 A WELL, IN THE CONVERSATIONS FOR HEALTH INSURANCE,

1 Q WHEN?

2 A I DON'T KNOW THE DATE.

3 Q YOU CONSIDER THIS TO BE A CONFLICT OF INTEREST?

4 A NO, BECAUSE WE HAD NOT REALLY DONE ANY BUSINESS  
5 WITH -- WE WERE SIMPLY LOOKING AT QUOTES. WE WERE NOT  
6 THINKING OF CHANGING INSURANCE BROKERS; WE WERE THINKING  
7 OF CHANGING INSURANCE CARRIERS. USI WAS OUR INSURANCE  
8 BROKER. MR. EPSTEIN CONTACTED HIS CLIENT WHO HAPPENS TO  
9 BE ALSO AN INSURANCE BROKER, BUT WE WEREN'T LOOKING TO  
10 CHANGE INSURANCE BROKERS; JUST CHANGE INSURANCE COMPANIES,  
11 PROVIDERS, BECAUSE AETNA IS WAY TOO EXPENSIVE, AND WE  
12 COULD NOT CONTINUE TO AFFORD THOSE POLICIES.

13 Q WHY DIDN'T YOU -- WHY DID YOU NEED ANOTHER  
14 INSURANCE BROKER IF -- WHY DID YOU NEED A QUOTE FROM  
15 ANOTHER INSURANCE BROKER IF YOU WERE NOT GOING TO CHANGE  
16 BROKERS?

17 A BECAUSE USI WAS SIMPLY NOT DOING THEIR JOB.

18 Q SO YOU WENT TO MR. EPSTEIN'S CLIENT TO GET A  
19 QUOTE WITH NO INTENTION WHATSOEVER OF USING THEM AS A  
20 BROKER?

21 A NO. THEY WERE KIND ENOUGH TO BRING ANOTHER  
22 COMPANY TO THE TABLE THAT OFFERED -- THAT OFFERED A PLAN.  
23 WE WEREN'T GOING TO HIRE THEM AS AN INSURANCE BROKER.  
24 WHAT KIND OF ARRANGEMENT, IF WE ULTIMATELY CHOSE THAT  
25 COMPANY, THEY HAD WITH EDIFY IS THEIR BUSINESS, BUT WE

1 THE HEALTH INSURANCE POLICY.

2 MR. LOFFREDO YOU BROUGHT UP THE HEALTH  
3 INSURANCE.

4 MR. AMLONG NO. NO. I ASKED HIM IN  
5 WHAT AREAS WAS SHE BEING RESISTANT, AND HE  
6 SAID THE COMPUTERS, THE HEALTH INSURANCE  
7 PLAN, AND THE REDUCTION OF STAFF.

8 MR. LOFFREDO. OKAY. WELL, THEN GO  
9 AHEAD.

10 BY MR. AMLONG

11 Q IN WHAT WAY -- WHAT DID MS. MCPHAIL DO TO BE  
12 RESISTANT TO PAYING LESS MONEY FOR INSURANCE?

13 MR. LOFFREDO. WELL, OBJECT TO FORM GO  
14 AHEAD.

15 THE WITNESS: RESISTANT IN THE SENSE  
16 THAT SHE WAS THE HUMAN RESOURCE DIRECTOR.  
17 SHE HAD STAFF, SPECIFICALLY CRISTA BANAS,  
18 THAT WAS IN CHARGE OF THAT AREA OF HEALTH  
19 INSURANCE. THE FACT THAT WE DID NOT HAVE USI  
20 BRINGING TO THE TABLE A COMPETING BID IN  
21 LIGHT OF THE FINANCIAL SITUATIONS OF CHILDNET  
22 AT THE TIME WAS RESISTANT TO HAVING ANY  
23 CHANGES TO THE CURRENT INSURANCE POLICY,  
24 WHICH WAS NOT TENABLE.

25

///



1 BY MR. AMLONG

2 Q SO YOU ARE INFERRING FROM THE FACT THAT THERE WAS  
3 NOT A LOWER BID THAT -- THAT THERE WAS NOT A LOWER BID  
4 FROM US THAT MS. MCPHAIL HAD BEEN RESISTANT TO IT?

5 A. YES.

6 Q WHAT DID MS. MCPHAIL -- IS THERE ANY OTHER WAY  
7 THAT MS. MCPHAIL RESISTED TO GETTING A BETTER DEAL ON  
8 HEALTH INSURANCE THAN NOT HAVING BROUGHT FORTH A LOWER  
9 BID?

10 A. NOT THAT I CAN THINK OF.

11 Q AND MS. MCPHAIL EVENTUALLY ANALYZED THE TWO  
12 OFFERINGS AND RECOMMENDED WHAT THE EXECUTIVE COMMITTEE  
13 CONSIDERED TO BE A BETTER DEAL?

14 A. ACTUALLY, WHAT I THINK IT WAS, FIRST OFF, CRISTA  
15 BANAS WHO TOOK THE LEAD ON THAT IN DEALING WITH THE  
16 EVALUATION. IT WAS THREE POLICIES THAT WERE EVALUATED,  
17 AETNA IN THEIR NEW QUOTE, UNITED HEALTH, AND COVENTRY.

18 AND LIKE I SAID EARLIER, I THOUGHT THERE WAS A  
19 VERY GOOD PRESENTATION OF -- NOT SO MUCH THE COST. THE  
20 COST WAS PRETTY EVIDENT, WHICH WAS MOST, LEAST, AND MIDDLE  
21 OF THE ROAD, BUT REALLY WITH A COVERAGE OF WHAT EACH  
22 POLICY COVERED.

23 AND, AGAIN, WE DECIDED AS A GROUP THAT ALTHOUGH  
24 UNITED DIDN'T PRESENT THE SAME TYPES OF COVERAGE THAT  
25 AETNA DID, IT WAS A BETTER POLICY THAN COVENTRY.

1 Q WHAT'S THE SOURCE OF YOUR KNOWLEDGE THAT CRI STA  
2 BANAS DID THIS AS OPPOSED TO MS. MCPHAIL?

3 A SHE REALLY LED THE DISCUSSIONS IN THE MEETINGS  
4 THAT I RECALL. IN FACT, IN ONE OF THE MEETINGS I WAS OUT  
5 OF TOWN ON VACATION AND I CALLED IN. WE HAD A TELEPHONIC  
6 WITH CRI STA, WHO PROVIDED MOST OF THE DETAILS, AND  
7 MS. MCPHAIL AND BARBARA MOSS AND SYLVIA SMITH-TORRES,  
8 BECAUSE SYLVIA SMITH-TORRES HAD JUST UNDERGONE SOME  
9 SERIOUS HEALTH ISSUES WITH HER HUSBAND AND HAD VERY  
10 SERIOUS CONCERNS AS TO THE POLICY THAT WE ULTIMATELY  
11 CHOSE.

12 Q HOW WAS MS. MCPHAIL RESISTANT TO ANY EVALUATION  
13 OF A REDUCTION OF STAFF?

14 A WELL, SHE CERTAINLY DIDN'T WANT ANYBODY FROM HR  
15 TO BE REDUCED.

16 Q WHO WAS SUPPOSED TO BE REDUCED?

17 A I DON'T RECALL THE NAMES.

18 Q WHAT DID SHE DO TO BE RESISTANT TO THIS?

19 A MADE IT VERY CLEAR TO MR. BERKOWITZ THAT SHE  
20 DIDN'T WANT ANYBODY FROM HR REDUCED.

21 Q WAS ANYBODY REDUCED?

22 A YOU KNOW I DON'T RECALL. I SEEM TO RECALL TWO  
23 PEOPLE. I CAN'T REMEMBER THEIR NAMES, BUT AS IT TURNS  
24 OUT, THE LIST THAT WAS PRODUCED, WE DIDN'T GET TO THAT  
25 MANY PEOPLE BECAUSE WE FOUND EFFICIENCIES LIKE WITH

1 INSURANCE SAVINGS AND CLOSING OFF THE ONE SERVICE CENTER  
2 AND THE OTHER SERVICE CENTER, THAT WE WERE ABLE TO ACHIEVE  
3 VERY GOOD EFFICIENCIES.

4 Q DID YOU PERSONALLY OBSERVE MS. MCPHAIL BE  
5 RESISTANT TO ANY REDUCTION OF STAFF?

6 A IN CONVERSATIONS WITH BARBARA MOSS, SYLVIA  
7 SMITH-TORRES, AND MARTY BERKOWITZ, YES.

8 Q YOU SAW HER IN CONVERSATIONS WITH THE THREE OF  
9 THEM?

10 A CORRECT.

11 Q AND WHAT WAS MS. MCPHAIL SAYING?

12 A SPECIFICALLY, I CAN'T TELL YOU WORD TO WORD, IT  
13 WAS FIVE YEARS AGO. WHAT I CAN TELL YOU IS SHE DID NOT  
14 WANT OR THINK IT WAS NECESSARY TO HAVE THE REDUCTION THAT  
15 MR. BERKOWITZ WAS PROPOSING.

16 Q WAS SHE PROPOSING OTHER REDUCTIONS?

17 A I DON'T RECALL THAT.

18 Q IN PARAGRAPH 11, YOU STATE THAT, QUOTE,  
19 "MOREOVER, ON SEVERAL OCCASIONS I HAD TO COUNSEL HER ON  
20 THE TONE OF HER COMMUNICATIONS WITH OTHER CHILDNET  
21 MANAGERS AND EXECUTIVE TEAM MEMBERS." THEN YOU REFER TO  
22 EXHIBIT 1.

23 OTHER THAN EXHIBIT 1, DID YOU COUNSEL MS. MCPHAIL  
24 ABOUT HER COMMUNICATIONS ANY OTHER TIME?

25 A YEAH. I GAVE YOU THE OTHER EXAMPLE OF THE

1 SI TUATI ON W TH CASSANDRA PHI LLI PS, AS I FI NALLY DI D HAVE A  
2 CONVERSATI ON W TH BARBARA MOSS AND SYLVI A SM TH TORRES.

3 Q SO WHAT DI D YOU TELL -- HOW DI D YOU COUNSEL  
4 MS. MCPHAI L?

5 A. SHE NEEDED TO TCNE I T DOWN. THERE WAS NO SENSE  
6 OF BEI NG SO CONFRONTATI ONAL, I GUESS.

7 Q TELL ME --

8 A. ESPECI ALLY W TH HER SUPERVI SOR, W TH BARBARA  
9 MOSS.

10 Q TELL ME WHAT YOU SAI D TO MS. MCPHAI L, AND WHEN  
11 YOU SAI D I T, THAT YOU CONSI DERED TO HAVE BEEN A COUNSELI NG  
12 CONCERNI NG HER COMMUNI CATI ONS?

13 A. COUNSELI NG I N THE HR PERSPECTI VE FOR PURPOSES OF  
14 HR; NO. I T WAS MORE LI KE, LEI GH, CHI LL OUT.

15 Q WHEN DI D YOU SAY, LEI GH, CHI LL OUT?

16 A. PROBABLY RI GHT AFTER THE CONVERSATI ON W TH  
17 CASSANDRA PHI LLI PS; CERTAI NLY DURI NG THE CONVERSATI ONS  
18 W TH MARTY BERKOW TZ. I MEAN, I T WAS CLEAR THAT THE TWO  
19 DI SLI KED EACH OTHER I NTEENSELY. THERE WAS NO NEED FOR  
20 THAT, I N MY OPI NI ON; NO NEED FOR THAT.

21 Q TELL ME WHEN -- COUNSELI NG I S ADVI SI NG SOMEBODY  
22 OF SOMETHI NG, CORRECT?

23 A. CORRECT.

24 Q SO WHEN AND I N WHOSE PRESENCE DI D YOU COUNSEL  
25 MS. MCPHAI L TO CHI LL OUT ABOUT CASSANDRA PHI LLI PS?



1 A. PROBABLY AFTER CASSANDRA LEFT; THE CONVERSATION  
2 WITH HER IN HER OFFICE.

3 (BRIEF INTERRUPTION.)

4 BY MR. AMLONG

5 Q DID YOU COMMIT THIS TO WRITING?

6 A. NO, SIR.

7 Q AND THERE WAS NO OTHER WITNESS TO THAT?

8 A. I DON'T RECALL.

9 Q DID YOU HAVE A CONVERSATION WITH HER IN FRONT OF  
10 MR. BERKOWITZ WHERE YOU COUNSELED HER?

11 A. CERTAINLY NOT IN FRONT OF MARTY. LEIGH AND I HAD  
12 WHAT I WOULD CALL A GOOD RELATIONSHIP. SHE WANTED TO BE  
13 PART OF THE EXECUTIVE TEAM. SHE HAD PREPARED SOME  
14 DOCUMENTS AS TO ADVOCATING WHY WITH SOME ARTICLES AS  
15 TO THAT OTHER COMPANY'S WOULD MAKE THEIR HR DIRECTOR PART  
16 OF THEIR EXECUTIVE TEAM. SO I WOULD HAVE GOOD  
17 CONVERSATIONS WITH LEIGH.

18 I T WAS DURING THOSE CONVERSATIONS THAT I DIDN'T  
19 UNDERSTAND -- I DIDN'T UNDERSTAND THE HISTORY, I DIDN'T  
20 UNDERSTAND WHY THERE WAS SUCH ANTAGONISM WITH THE SENIOR  
21 MANAGEMENT AT CHILDNET, WITH MARTY, WITH BARBARA MOSS, NOT  
22 SO MUCH WITH SYLVIA, BUT ALSO WITH SYLVIA AND THE  
23 INTERACTION WITH HER SUPERVISOR, THE MANAGERS AND  
24 SUPERVISORS. I JUST DIDN'T UNDERSTAND WHY THERE WAS  
25 THAT...

1 Q OTHER THAN THE CONVERSATION THAT YOU SAY THAT YOU  
2 HAD WITH IN YOUR OFFICE AFTER --

3 A. ACTUALLY, IT WOULD HAVE BEEN HER OFFICE.

4 Q -- IN HER OFFICE AFTER CASSANDRA PHILLIPS LEFT  
5 AND THE E-MAIL THAT YOU SENT HER ABOUT THE E-MAIL STRING  
6 WITH MR. BERKOWITZ, WAS THERE ANY OTHER COUNSELING OF  
7 MS. MCPHAIL CONCERNING HER COMMUNICATIONS WITH OTHERS?

8 A. YEAH. AFTER MR. BERKOWITZ LEFT.

9 Q AFTER MR. BERKOWITZ LEFT WHERE?

10 A. AFTER MR. BERKOWITZ RESIGNED FROM CHILDNET AND A  
11 NEW CFO WAS HIRED, MR. PAREKH --

12 Q OKAY. . .

13 A. -- THERE WAS SOME DIFFICULTIES IN REFERENCE TO  
14 SOME OF THE THINGS THAT HE WANTED DONE. THAT PART WAS THE  
15 TRAINING FOR ADP.

16 Q AND WHAT CONVERSATIONS DID YOU HAVE WITH  
17 MS. MCPHAIL ABOUT THAT?

18 A. LEIGH WAS STILL OF THE OPINION THAT IT WAS NOT IN  
19 THE BEST INTEREST OF CHILDNET TO HAVE GONE WITH OR GO WITH  
20 ADP. SHE FELT THAT THERE WERE SEVERAL ISSUES, EITHER WITH  
21 THE HARDWARE, OR THE WAY THEY DID BUSINESS, OR THAT THERE  
22 WAS A BETTER WAY OF DOING IT.

23 MY OPINION WAS THE DECISION HAS BEEN DONE. IT  
24 WAS MY DECISION. MOVE ON. IT'S NOT LIKE SHE WASN'T ASKED  
25 FOR HER OPINION. SHE DID HER JOB IN PROVIDING HER

1 A. NO. THE FACT THAT I HAD A CHIEF FINANCIAL  
2 OFFICER THAT MADE RECOMMENDATIONS AFTER CONSULTATION WITH  
3 STAFF, INCLUDING MS. MCPHAIL, MADE A RECOMMENDATION THAT  
4 FROM HIS PERSPECTIVE IT WAS MORE EFFECTIVE, EFFICIENT, AND  
5 FINANCIALLY PRUDENT TO MOVE TO A COMBINED SYSTEM IS WHAT I  
6 RELIED ON.

7 Q ARE YOU AWARE THAT WHEN MS. MCPHAIL WAS HIRED,  
8 SHE HAD FULL AUTHORITY ON THE SELECTION OF HR SOFTWARE?

9 A. I DON'T KNOW THAT.

10 Q DID YOU HAVE ANYTHING TO DO WITH TAKING THAT AWAY  
11 FROM HER?

12 A. I DON'T RECALL WHEN OR IF THAT HAPPENED, TO TELL  
13 YOU THE TRUTH.

14 Q WAS THERE A COST ANALYSIS OF HOW MUCH IT WAS  
15 GOING TO COST TO GO WITH ADP?

16 A. I BELIEVE MR. BERKOWITZ CONDUCTED THAT, YES.

17 Q AND IT SHOWED THAT IT WAS GOING TO BE 50 PERCENT  
18 MORE?

19 A. I DON'T RECALL THAT.

20 Q YOU DISCUSSED COUNSELING MS. MCPHAIL AFTER  
21 MR. BERKOWITZ LEFT.

22 WHEN AND WHERE DID THAT TAKE PLACE?

23 A. AT CHILDNET.

24 Q WHERE; YOUR OFFICE, HER OFFICE?

25 A. PROBABLY MY OFFICE.

1 Q WHAT DID YOU SAY TO HER?

2 A IT WASN'T ANYTHING SPECIFIC THAT I RECALL. IT  
3 WAS MORE OF, LIKE I SAID BEFORE, CHILL OUT. YOU HAVE A  
4 SUPERVISOR NAMED BARBARA MOSS. THERE'S A CHAIN OF  
5 COMMAND. IF YOU HAVE ISSUES, BRING THEM UP TO MS. MOSS,  
6 WHO WILL BRING THEM UP AT SENIOR STAFF MEETINGS.

7 Q WHAT WAS MS. MCPHAIL DOING THAT WAS PROMPTING YOU  
8 TO TELL HER TO "CHILL OUT"?

9 A JUST AT THAT TIME WAS THE WHOLE IMPLEMENTATION OF  
10 ADP TRAINING. IT WAS BROUGHT TO MY ATTENTION THAT THERE  
11 WERE ISSUES WHERE MS. MCPHAIL, AS THE DIRECTOR OF HR, WAS  
12 NOT COOPERATING WITH THE IMPLEMENTATION OF ADP.

13 Q HOW WAS SHE NOT COOPERATING?

14 A SHE WAS ARRIVING LATE, DISRUPTIVE IN CLASS, AND  
15 VOICING HER OPINION THAT THIS WAS NOT THE BEST THING FOR  
16 CHILNET.

17 Q AND DID YOU HEAR THIS?

18 A FROM BOTH MR. DI PAK PAREKH AND BARBARA MOSS.

19 Q YOU DID NOT PERSONALLY HEAR IT?

20 A NO, SIR.

21 Q DID YOU ASK MS. MCPHAIL IF IT HAPPENED?

22 A I DON'T THINK SO.

23 Q DO YOU KNOW IF MR. PAREKH OR MS. MOSS HEARD IT?

24 A I DON'T BELIEVE THEY HEARD IT BECAUSE I DON'T  
25 BELIEVE THEY WERE AT THE TRAINING, BUT I DON'T KNOW THAT



1 FOR A FACT. I BELIEVE MR. PAREKH WAS INFORMED OF IT. I  
2 DON'T KNOW IF IT WENT TO MR. PAREKH OR MS. MOSS, BUT THEY  
3 WERE INFORMED OF IT BY MANAGERS OF ADP THAT SPECIFICALLY  
4 COMPLAINED ABOUT MS. MCPHAIL.

5 Q SPECIFICALLY, THEY WERE INFORMED OF IT BY A SALES  
6 MANAGER AT ADP WHO FELT THAT MS. MCPHAIL WAS NOT A WILLING  
7 CUSTOMER, CORRECT?

8 A. THAT'S A FAIR ASSESSMENT. I DON'T KNOW IF THE  
9 PERSON WAS A SALES MANAGER. I KNOW THEY WERE MANAGER, BUT  
10 I DON'T KNOW SPECIFICALLY IF IT WAS A SALES MANAGER. AND  
11 THERE WAS APPARENTLY TWO SEPARATE PEOPLE THAT HAD  
12 COMPLAINTS.

13 Q BUT YOU NEVER ASKED MS. MCPHAIL -- YOU NEVER  
14 ASKED MS. MCPHAIL IF THESE INCIDENTS OCCURRED?

15 A. I DON'T RECALL.

16 Q IN PARAGRAPH 18, YOU STATE THAT "AT TIMES  
17 MS. MCPHAIL WAS, "CONTENTIOUS AND ARGUMENTATIVE RATHER  
18 THAN CONSTRUCTIVE IN VOICING HER OPINIONS ON THE ISSUE OF  
19 CHANGING THE HR SOFTWARE TO ADP."

20 GIVE ME AN EXAMPLE OF WHEN SHE WAS "CONTENTIOUS  
21 AND ARGUMENTATIVE."

22 A. I THINK CONTENTIOUS AND ARGUMENTATIVE ARE BOTH ON  
23 THE E-MAIL THAT YOU GAVE ME AS AN EXHIBIT. I DON'T  
24 BELIEVE THAT THAT'S AN APPROPRIATE BEHAVIOR OF AN  
25 EMPLOYEE; MORE SO, THE DIRECTOR OF HR.

1           I N M Y O P I N I O N, I T I S T H E -- A N Y G O O D E M P L O Y E E ' S  
2       J O B W H E N A S K E D T O P E R F O R M A T A S K, P A R T I C U L A R L Y A N  
3       E V A L U A T I O N O F A S Y S T E M T H A T T H E Y A R E I N C O N T R O L O F, I S T O  
4       M A K E A N E V A L U A T I O N, P R E S E N T T H E R E S U L T S O F T H A T  
5       E V A L U A T I O N, A N D M A K E A R E C O M M E N D A T I O N. B U T I F T H E  
6       R E C O M M E N D A T I O N S A R E N ' T A C C E P T E D B Y T H O S E H I G H E R T H A N T H E Y  
7       A R E, Y O U A C C E P T T H E R E C O M M E N D A T I O N S; Y O U A C C E P T T H E  
8       D E C I S I O N S A N D M O V E O N.

9           I T W A S A P A T T E R N W I T H L E I G H E V E N A T T H E T I M E O F  
10      T H E H I R I N G O F M R. P A R E K H. S H E D I D N ' T A G R E E W I T H T H A T  
11      E I T H E R. I T J U S T S E E M E D T O B E O N E T H I N G A F T E R T H E O T H E R.  
12      S H E D I D A G O O D J O B I N D O I N G T H E B A C K G R O U N D O N M R. P A R E K H.  
13      S H E B R O U G H T F O R T H T H I N G S T H A T I N E E D E D T O K N O W  
14      C O N S I D E R E D T H E M. C O N S I D E R E D T H E M W I T H T H E C F O A T T H E T I M E,  
15      D I S C U S S E D I T W I T H M Y B O A R D C H A I R A N D W I T H T H E C H A I R O F T H E  
16      F I N A N C E C O M M I T T E E, A N D I M A D E A D E C I S I O N. S H E D I D N ' T  
17      T H I N K I T W A S T H E R I G H T D E C I S I O N E I T H E R.

18           M O V E O N, T H E D E C I S I O N I S M A D E.

19           Q     O T H E R T H A N T H E E - M A I L, G I V E M E A N E X A M P L E O F W H E N  
20      S H E W A S C O N T E N T I O U S A N D A R G U M E N T A T I V E R A T H E R T H A N  
21      C O N S T R U C T I V E C O N C E R N I N G A D P.

22           A.     I N T H E D I S C U S S I O N S T H A T W E W O U L D H A V E, W H I C H  
23      L E I G H W A S I N C L U D E D, I N M O V I N G F O R W A R D T O T H E D E C I S I O N T O  
24      U S E A D P A S T H E P R O G R A M, S H E C O N T I N U E D T O B E L I E V E T H A T I T  
25      W A S N O T T H E R I G H T D E C I S I O N. A N D O N E T H I N G I S P R E S E N T I N G

1 THE RESULTS OF YOUR EVALUATION AND PRESENTING YOUR  
2 RECOMMENDATIONS, AND THEN ANOTHER THING IS ENGAGING THE  
3 CFO IN DISCUSSIONS THAT I DON'T THINK ARE APPROPRIATE IN  
4 REFERENCE TO A DECISION THAT HE'S MAKING OR HE'S MAKING A  
5 RECOMMENDATION TO ME ON.

6 Q IN HOW MANY MEETINGS -- HOW MANY MEETINGS DID YOU  
7 PARTICIPATE IN AT WHICH MS. MCPHAIL WAS PRESENT CONCERNING  
8 ADP?

9 A I RECALL -- I RECALL -- I USED TO -- I STILL DO  
10 HAVE A SENIOR STAFF MEETING ONCE A WEEK, AND THIS ISSUE  
11 WAS DISCUSSED IN A SENIOR STAFF MEETING, AND I INVITED  
12 MS. MCPHAIL TO ATTEND.

13 Q HOW MANY TIMES?

14 A I JUST THINK ONCE, ACTUALLY.

15 Q DO YOU RECALL WHEN IT WAS?

16 A I THINK IT WAS AFTER THIS E-MAIL BECAUSE I JUST  
17 WANTED TO PUT IT TO REST. I CAN'T RECALL THE DATE.

18 Q AND TELL ME WHAT HAPPENED DURING THAT MEETING

19 A WE HAD A DISCUSSION ON IT. LEIGH PRESENTED HER  
20 VIEWS, MARTY PRESENTED HIS VIEWS, AND BARBARA PRESENTED  
21 HER VIEWS. NOTHING WAS DECIDED THEN.

22 Q AND WHAT DID MS. MCPHAIL SAY OR DO DURING THAT  
23 MEETING THAT WAS CONTENTIOUS AND ARGUMENTATIVE RATHER THAN  
24 CONSTRUCTIVE?

25 A THE FACT OF PRESENTING HER OPINION THAT IT WAS

1 NOT GOING TO BE EFFECTIVE OR COST EFFICIENT OR EFFECTIVE  
2 FOR CHILDNET TO CHANGE OVER TO ADP WHEN SHE FELT IT WAS  
3 MORE OF AN ISSUE WITH IT THAT WAS UNDER THE DIRECTION OF  
4 MR. BERKOWITZ AND NOT WANTING TO GO MAKE THE TWO -- THE  
5 TWO EXISTING SYSTEMS COMMUNICATE.

6 Q WAS SHE RAISING HER VOICE?

7 A SHE DOESN'T NEED TO RAISE THE VOICE. SHE CAN BE  
8 VERY DIRECT AND POINTED.

9 Q WAS SHE BEHAVING IN AN INAPPROPRIATE MANNER?

10 A MAYBE NOT TO YOU, BUT TO ME SHE WAS.

11 Q BY DISAGREEING?

12 A NOT BY DISAGREEING, BY DISAGREEING IN A TONE --  
13 HOW DO YOU DESCRIBE TONE? IN -- DISAGREEING IN A TONE  
14 THAT I FELT WAS NOT APPROPRIATE.

15 Q DID YOU SAY ANYTHING TO HER AT THE TIME?

16 A YEAH, EXACTLY WHAT I SAID ON THE E-MAIL. TONE  
17 THINGS DOWN. YOU DON'T NEED TO GO THIS WAY IN ORDER TO  
18 HAVE A CONSTRUCTIVE DISCUSSION.

19 Q WAS THERE ANY LANGUAGE THAT SHE USED YOU THOUGHT  
20 WAS INAPPROPRIATE?

21 A NO, NO. I DON'T RECALL LEIGH EVER USING ANY  
22 INAPPROPRIATE LANGUAGE.

23 Q TELL ME WHICH OF YOUR EXECUTIVE TEAM COMPLAINED  
24 TO YOU ABOUT HOW MS. MCPHAIL COMMUNICATED WITH THEM?

25 A MARTY BERKOWITZ, SYLVIA SMITH-TORRES, FRED PINTO,



1 Q DID MR. EPSTEIN RECOMMEND THE OUTSIDE FIRM THAT  
2 YOU HIRED?

3 A. YES. AND I DON'T RECALL HIRING HER SPECIFICALLY.  
4 I DON'T RECALL SIGNING ANY RETAINER AGREEMENT OR ANYTHING  
5 LIKE THAT. HE RECOMMENDED HER. SHE BROUGHT FORWARD A  
6 CANDIDATE. MR. BERKOWITZ AND I INTERVIEWED THE CANDIDATE.  
7 MARTY FELT THAT THE CANDIDATE WAS QUALIFIED. I HAD  
8 ANOTHER MEETING WITH MR. PAREKH. I FELT I HAD A  
9 CONNECTION, AND LEIGH DID SOME OF THE BACKGROUND. SHE  
10 EXPRESSED SOME OF HER CONCERNS. I VERIFIED THOSE  
11 CONCERNS, AND I DISCUSSED THEM WITH MR. BERKOWITZ,  
12 DISCUSSED THEM WITH MR. PAREKH, THEN DISCUSSED THEM WITH  
13 MR. EPSTEIN AND WITH MY BOARD CHAIR, WHO WAS AT THE TIME  
14 HOWARD BAKALAR, AND EVERYTHING WAS REALLY PUT ON THE  
15 TABLE.

16 Q WHEN DID YOU LEARN THAT MR. PAREKH HAD BEEN IN  
17 BANKRUPTCY?

18 A. I THINK LEIGH HAD PROVIDED THAT INFORMATION.

19 Q DID SHE TELL YOU?

20 A. I DON'T REMEMBER IF SHE TOLD ME DIRECTLY OR SHE  
21 PROVIDED DOCUMENTATION OF IT. SHE MAY HAVE TOLD ME  
22 DIRECTLY, BUT I DON'T RECALL; AND SHE INDICATED THAT  
23 MR. PAREKH HAD SOME SORT OF INVOLVEMENT WITH AN  
24 INVESTIGATION AT THE CITY OF MIAMI WHEN HE WAS THERE  
25 INVOLVING THE SEC OR SOMETHING LIKE THAT.

1 MR. LOFFREDO. OKAY.

2 BY MR. AMLONG

3 Q IN PARAGRAPH 23, YOU SAID YOU FOUND MS. MCPHAIL'S  
4 CONDUCT AT THE TRAINING SESSIONS TO BE UNACCEPTABLE AS A  
5 CHILDNET MANAGEMENT EMPLOYEE, AND REFLECTED POORLY ON  
6 CHILDNET.

7 YOUR KNOWLEDGE OF MS. MCPHAIL'S CONDUCT AT THE  
8 TRAINING SESSIONS IS THIRDHAND, CORRECT?

9 A. CORRECT.

10 Q YOU NEVER ASKED HER ABOUT IT?

11 A. NO.

12 Q NOR DID YOU SPEAK TO ANYBODY WHO ACTUALLY  
13 WITNESSED IT?

14 A. NO.

15 Q WAS THAT THE TRIGGERING EVENT?

16 A. TRIGGERING EVENT?

17 Q TO YOU FIRING HER.

18 A. YES.

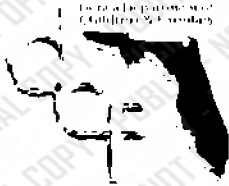
19 Q THE REPORT YOU GOT FROM THE ADP MANAGER?

20 A. CORRECT.

21 Q YOU NEVER LEARNED ANYTHING ABOUT -- YOU NEVER  
22 LEARNED ANYTHING ABOUT HER INVOLVEMENT IN THE  
23 INVESTIGATION THAT LED TO THE FBI INVESTIGATION?

24 A. NO, SIR.

25 (THEREUPON, A BRIEF RECESS WAS TAKEN @



**State of Florida  
Department of Children and Families**

**Charlie Crist**  
*Governor*

**Robert A. Butterworth**  
*Secretary*

**Jack L. Moss**  
*District Administrator*

April 23, 2007

Mr. Howard Bakalar  
Acting ChildNet Chairman  
c/o Family Central, Inc.  
840 Southwest 81<sup>st</sup> Avenue  
North Lauderdale, Florida 33068

Mr. Larry Rein  
Acting President/CEO  
ChildNet, Inc.  
1400 West Commercial Blvd.  
Fort Lauderdale, Florida 33309

Dear Mr. Bakalar and Mr. Rein:

Pursuant to Contract JJ208, Standard Contract, page 6, Section III.B.1., corrective action plans may be required for noncompliance, nonperformance, or unacceptable performance under this contract. As a result of unacceptable performance, the Department is requesting a Corrective Action Plan (CAP) within 30 days of receipt of this letter and immediate action on those issues which have a direct impact on the health, safety and welfare of the children and families served by this contract. Penalties may be imposed for failures to implement or to make acceptable progress on such corrective action plans.

The following have been identified; therefore, Contract JJ208 is out of compliance:

1. ChildNet has failed to satisfactorily perform Contract JJ208 dated June 27, 2006, Page 14 Attachment I, Section B.2.b. This provision requires that "the provider's relevant staff, and any relevant subcontracted provider's staff and volunteers, will meet the qualification, screening and training/certification requirements as required by Chapters 65C-14, F.A.C. and/or 65C-15, F.A.C., sections 435.04, 402.40, 402.731, and 491.012, F.S."

DISTRICT TEN  
201 West Broward Boulevard, Fort Lauderdale, Florida 33301

Mission: Protect the Vulnerable, Promote Strong and Economically Self-Sufficient Families, and  
Advance Personal and Family Recovery and Resiliency

**ATTACHMENT 3**



On March 30, 2007, an internal investigation of ChildNet, Inc. by private investigator Wayne Black revealed that ChildNet had employed one or more employees with a disqualifying criminal history of violent, non-violent, and substance abuse felony convictions. Background screening checks on individuals were either not performed or the results were ignored by ChildNet.

The Corrective Action Plan must include an audit of all current and prospective employees and volunteers for disqualifying criminal offenses. In addition, if ChildNet initiates rescreening of its employees and receives disqualifying information regarding said employee, ChildNet must provide the Department with a list of names of those disqualifying employees within a reasonable time period. The plan must also include steps that ChildNet will implement to ensure that its employees are properly screened and rescreened in the future as well as implement a procedure to follow up on employees who are discovered to have disqualifying information after being screened or rescreened. Immediate action must be taken to prohibit client contact by any employee without a background check.

2. ChildNet has failed to satisfactorily perform Contract JJ208 dated June 27, 2006, Page 20 Attachment I, Section B.6.c. This provision requires ChildNet to perform "Reference Checks of Current and Former Department and Provider Employees." The Contract further requires that "the provider or its subcontractor shall conduct a reference check of any current or former department or any provider or subcontractor employee who applies and is being considered for employment prior to the appointment of the individual. The reference check will be documented in writing and maintained in the employee's personnel file."

An audit of ChildNet's Human Resource files was completed on April 19, 2007 by the Department and the Inspector General's Office. ChildNet personnel files revealed a practice of accepting incomplete or non-existent reference checks. Pursuant to its own policy and procedures, ChildNet is required to perform at least (2) two reference checks on each of its employees. The Department's investigation revealed instances which either only one (1) reference check was performed or none were performed at all. Pursuant to its own policy and procedures, ChildNet is required to perform drug screens at the time of hiring. The Department's investigation disclosed that this policy was not followed consistently.

The Corrective Action Plan must address each of the findings of the Human Resource Audit of April 19, 2007. Proper references must be obtained for every current or prospective employee, particularly those employees serving in positions of special trust. The ChildNet policy on Drug Screening must be followed. The Plan must also include the actions ChildNet will undertake in the future to monitor its hiring practices.

3. ChildNet has failed to satisfactorily perform Contract JJ208 dated June 27, 2006,



Page 1, Section 1.D. This provision requires ChildNet to do the following: "1) establish and maintain books, records, and documents (including electronic storage media) sufficient to reflect all income and expenditures of funds provided by the department under this contract 2) to retain all client records, financial records, supporting documents, statistical records and any other documents (including electronic storage media) pertinent to this contract for a period of six (6) years, & 4) to assure that these records shall be subject to all reasonable times to inspection, review, copying or audit by Federal, State or other personnel duly authorized by the Department". In addition, ChildNet has failed to satisfactorily perform Contract JJ208 dated June 27, 2006, Page 1, Section 1.B. This provision requires ChildNet to "submit bills for fees or other compensation for services or expenses in sufficient detail for a proper pre-audit and post-audit. Further, ChildNet has failed to satisfactorily perform Contract JJ208 dated June 27, 2006, Page 24 Attachment I, Section C.2. This provision requires that "the provider shall request payment monthly through the submission of a properly completed invoice."

Wayne Black's March 30, 2007 report and April 13, 2007 presentation to the Board of Directors of ChildNet revealed that ChildNet failed to establish a system that segregated duties in the areas of bidding, purchasing, payment, inventory control and receiving and that ChildNet's current system has either integrated or excluded certain areas that would allow for an effective accounting of financial records, expenditures, and supporting documentation. Wayne Black is the private investigator retained by ChildNet to investigate the theft of gift cards that were in the possession of ChildNet and subsequently stolen a few months ago. In addition, the purchasing, bidding, payment, receiving and invoicing system within ChildNet and the manner in which said systems have been implemented does not allow for the proper tracking, accounting, segregation, or submission of invoices and related documents for services or fees billed to the Department. Wayne Black's report and presentation to the Board of Directors revealed that the invoices created and submitted by ChildNet to the Department were either fraudulent in nature or insufficient in detail and accuracy. ChildNet also failed to follow proper procedures for the procurement of goods and services pursuant to Florida Statute 287.

The Corrective Action Plan must address each finding of Wayne Black's Report and Presentation to the Board of Directors. Proper systems must be put in place to ensure accurate and detailed invoicing and documentation of products and/or services charged to the Department. The Plan must also include the actions ChildNet will undertake in the future to implement proper internal procedures and systems for the review, submission, tracking and reconciling of invoices and documentation submitted to the Department. Furthermore, ChildNet must also include action that it will undertake to segregate certain areas within its organization such as purchasing, receiving, and payment in order to assure proper controls are present within ChildNet as well as implement purchasing and bidding procedures that are compliant with Florida Statute 287.

4. ChildNet has failed to satisfactorily perform Contract JJ208 dated June 27, 2006, Page 25 Attachment I, Section C.5. This provision requires that "Expenditure documentation includes, but is not limited to, those expenditures that are allowable from funds identified as State Financial Assistance, per Chapter 2006-30, L.O.F." and the Department of Financial Service's Reference Guide for State Expenditures. ChildNet has also failed to satisfactorily perform Contract JJ208 dated June 27, 2006, Page 26 Attachment I, Section C.9. This provision requires that "the amount of disallowance caused by the provider's failure to comply with state or federal regulations or the amount of any incorrect claim discovered in any federal or state audit shall be repaid to the department by the provider upon discovery". Furthermore, ChildNet has failed to satisfactorily perform Contract JJ208 dated June 27, 2006, Page 11 Attachment I, Section B.1.e.2. This provision requires ChildNet to "comply with all state laws and rules and federal laws and regulations as amended from time to time."

Wayne Black's March 30 2007 report as well as his April 13, 2007 presentation to the Board of Directors of ChildNet addressed an interview conducted by Mr. Black with Peter Greenhough concerning the thefts of gift cards at ChildNet, the invoicing system at ChildNet and Mr. Greenhough's position as Chief Financial Officer of ChildNet. According to Mr. Black, Peter Greenhough admitted that he directed Steve Williams to alter and submit an invoice to the Department to build a permanent wall, even though said invoice inaccurately or fraudulently referred to the wall as a partition in order to obtain payment from the Department. Mr. Greenhough acknowledged that he knew the Department would not have paid for the abovementioned invoice if said invoice had been a true and accurate invoice. In addition, Wayne Black stated in his report that there were many cases in which fraudulent vendor proposals or invoices for construction projects were submitted to the Department for payment and that ChildNet knew, as well as directed those vendors to create these fraudulent invoice or proposals in order for ChildNet to obtain payment from the Department. The submission of those invoice to the Department as well as Mr. Greenhough's admission that said invoice was inaccurate or fraudulent is a violation of State and Federal law. Submission of the abovementioned invoice violates Florida Statute 216.292(1) (a) and Circular A-122 (7) (B) (15) from the Office of the Management and Budget for the United State of America.

The Corrective Action Plan must address each finding of Wayne Black's Report and presentation to the Board of Director's regarding the use of fraudulent or inaccurate invoices. In addition, the Corrective Action Plan must include plans to implement polices and procedures addressing capital improvements that are not in compliance with Florida Statute 216.292(1) (a) and Circular A-122 from the Office of the Management and Budget for the United State of America. ChildNet must conduct an audit in order to determine in what instances state or federal funds have been requested, received and expended improperly for capital improvements or other unallowable items. Furthermore, ChildNet is on official

notice of ChildNet's improper use and expenditure of state and federal funds and must implement a plan to reimburse the appropriate federal and/or state agencies, including, but not limited to the Department, for payment of those capital improvements or any other unallowable expenditures that were billed and received by ChildNet from any state or federal agency and that are in violation of Florida Statute 216.292(1) (a) and Circular A-122 from the Office of the Management and Budget for the United State of America. The Plan must also address steps that ChildNet will take to ensure that there is no improper expenditure of state or federal funds.

5. ChildNet has failed to satisfactorily perform Contract JJ208 dated June 27, 2006, Page 8 Attachment I, Section A.2.a. This provision requires that the "provider shall deliver or cause to be delivered foster care or related services pursuant to 409.1671, F.S., and prevention services, pursuant to s. 20.19, F.S., while ensuring each child's safety, well being and permanency." In addition, ChildNet has failed to satisfactorily perform Contract JJ208 dated June 27, 2006, Page 12 Attachment I, Section B.1.e.4. This provision requires ChildNet to "provide transportation of children to meet each child's safety, well-being, and permanency needs. Comply with provisions of Chapter 427, F.S. Part I, Transportation Services, and Chapter 41-2, F.A.C., Commission for the Transportation Disadvantaged, if public funds provided under this contract will be used to transport clients."

On April 16, 2007, The Department and the Inspector General's Office conducted an audit of ChildNet's human resource files and inventory. This audit was done based on the Wayne Black's March 30, 2007 report and his April 13, 2007 presentation to the Board of Directors of ChildNet. The results of the aforementioned audits as well as Mr. Black's report and presentation to the Board of Director's of ChildNet revealed the following:

- a) Twenty (20) of ChildNet's employees possessed driver's licenses that were suspended, invalid, or have significant past or pending violations.
- b) Some of the vehicles owned and/or operated by ChildNet and/or its employees were not in good repair and had serious mechanical problems. In addition, ChildNet was unable to accurately confirm whether or not invoices for repairs or maintenance on vehicles owned and/or operated by ChildNet actually performed on those aforementioned vehicles.
- c) ChildNet did not have a policy regarding its employees, or its subcontractors as it concerned the transportation of children in the custody and/or care of ChildNet or its subcontractors.
- d) ChildNet did not confirm whether or not it had proper automobile insurance coverage in sufficient amounts for those vehicles.



- e) The audit by the Inspector General's office revealed that four ChildNet vehicles were sold for \$100 each, an amount that is far below market value.

Pursuant to Contract JJ208 dated June 27, 2006, ChildNet is responsible for the safety, security and well-being of children within its care and/or custody. This responsibility also extends to the transportation of children in the care and/or custody of ChildNet. ChildNet's use of employees and vehicles as set forth above to transport children in its care and/or custody is in violation of the Contract JJ208, Florida Statute 427, and Chapter 41-2 of the Florida Administrative Code. The aforementioned violations create a health, safety and well-being issue that must be addressed immediately by ChildNet to the satisfaction of the Department.

The Corrective Action Plan must address each finding of the Human Resource Audit of April 19, 2007, the audit of the Inspector General, Mr. Black's report and Mr. Black's presentation to the Board of Directors of ChildNet. Proper actions must be taken immediately to ensure that children in the care and/or custody of ChildNet are transported safely by ChildNet. The Plan must also address the implementation of policies and procedures by ChildNet for the transportation of children in its care and/or custody, as well as the appropriate disposition of vehicles and other valuable property owned by ChildNet and purchased with state or federal funds.

- 6. ChildNet has failed to satisfactorily perform Contract JJ208 dated June 27, 2006, Page 4, Standard Core Contract, W. Information Security Obligations, Section 1 2, & 4. ChildNet has failed to satisfactorily perform Contract JJ208 dated June 27, 2006, Page 54 Attachment VI, Community-Based Care Information Systems Requirements, Section A.9. This provision provides that "material security violations or improper information disclosures, if found, shall constitute sufficient grounds for a determination that the contract has been breached.

In addition, Contract JJ208 dated June 27, 2006, Page 49, Attachment V, Section IV requires that the provider use the policies and procedures previously submitted and approved by the Department of Children and Families in lieu of the department's operating procedures. This provision requires ChildNet to ensure the following: "1) identify an appropriately skilled individual to function as its Data Security Officer who shall act as a liaison to the department's security staff and who will maintain an appropriate level of data security for the information the provider is collecting or using in the performance of this contract. An appropriate level of security includes approving and tracking all provider employees that request system information access and ensuring that use access has been removed from all terminated provider employees, 3) to provide the latest departmental Security Awareness Training to its staff and subcontractors, & 4) "to ensure that all provider employees who have access to departmental



information are provided a copy of CFOP 50-6 and that they sign the DCF Security Agreement form (CF 11), a copy of which may be obtained from the contract manager." ChildNet's Policy and Procedures for Security of Data and Information Technology Resources also requires ChildNet to "implement and enforce level of security which will provide for the protection of data and information technology resources from accidental or intentional unauthorized disclosure, modification, or destruction by persons within or outside ChildNet."

An internal investigation of ChildNet uncovered the following material security and disclosure violations

- At least twenty (20) unknown information technology vendors have access to ChildNet systems and critical confidential data.
- Computer attacks on the entire ChildNet computer system are possible because of inadequate hardware and software.
- Insufficient security measures resulted in an April 6, 2007 theft of a ChildNet laptop computer containing personal information on about 11,333 families.
- One or more individuals, including those persons that are the subject of on-going investigations by certain federal, state and local agencies, had remote access to critical systems within ChildNet that allowed them to disable security measures.

The April 19, 2007 ChildNet Technology Review by the Department of Children and Families revealed that ChildNet has critical security and data integrity issues that need immediate redress.

The Department understands that actions are already in progress to enhance the security of confidential data in ChildNet's care. The Corrective Action Plan must set out a course of action to secure ChildNet's technology resources and provide for the ongoing protection of confidential data contained in those resources. ChildNet must immediately implement a comprehensive IT and Security plan, comply with the requirements of aforementioned sections of the Contract and establish an ongoing practice consistent with the recommendations of the April 19, 2007 Technology Review.

7. ChildNet has failed to satisfactorily perform Contract JJ208 dated June 27, 2006, Page 54 Attachment VI, Community-Based Care Information Systems Requirements, Section A.9. This provision provides that ChildNet has failed to institute an inventory tracking system that accurately reflects the inventory and links each item of tangible personal property purchased by or donated to ChildNet to the invoice for the property or gift and to the property's physical location. ChildNet is required by Contract JJ208 Exhibit A to annually submit a tangible personal property inventory in accordance with the requirements of Attachment VIII to Contract JJ208.

The March 30, 2007 internal investigation of ChildNet raised concerns about the accuracy of its reporting of the number of computers that ChildNet has and that "there has never been an accurate inventory of computers and IT related items".

The Corrective Action Plan must include a description of the inventory tracking system that ChildNet will use to maintain an accurate and up-to-date inventory. The Plan must provide that the inventory will be completed within 30 days of the date of the Corrective Action Plan.

8. The Department believes the appointment of a permanent ChildNet management team is critical to the success of any corrective action. The Plan must provide for how and when ChildNet will fill the critical positions of Chief Executive Officer and Chief Financial Officer with qualified individuals.

If compliance with this request is not achieved the Department may exercise its options to terminate contract JJ208 for cause pursuant to Section III, Paragraph C, Subsection 3 of the Standard Contract or take any other action it has available under Florida law or contract JJ208.

The Department recognizes that ChildNet has already taken action to implement better systems and procedures in certain areas during its transition in leadership on the executive and board level, and stands ready to provide technical assistance in order to assist ChildNet in coming into compliance with the Contract. Please be advised that since investigations by federal, state and local authorities are on-going in this matter, this corrective action letter is conditional on the results of those investigations and that further action or recommendations may be requested by the Department

The Department is committed to ensuring the safety and well-being of children in Broward County. To that end the Department requires ChildNet's prompt action to resolve the issues addressed in this letter.

Sincerely

Jack L. Moss  
District Administrator

**Silvia Smith-Torres**

---

From: Barbara Moss  
Sent: Friday, February 15, 2008 10:41 AM  
To: Marty Berkowitz; Silvia Smith-Torres; Emilio Benitez  
Subject: (Archived) RE: Time and attendance

Ok I agree the emails must stop. This is a decision that needs to be made by the senior staff with all the facts. Nothing should be finalized before that happens. Thanks

-----Original Message-----

From: "Marty Berkowitz" <mberkowitz@ChildNet.us>  
Subj: RE: Time and attendance  
Date: Fri Feb 15, 2008 9:45 am  
Size: 5K  
To: "Leigh McPhail" <LMcPhail@ChildNet.us>  
cc: "Donna Skees" <DSkees@ChildNet.us>; "Fred Pinto" <FPinto@ChildNet.us>; "Karen Rubino" <KRubino@ChildNet.us>; "Barbara Moss" <BMoss@ChildNet.us>; "Emilio Benitez" <ebenitez@ChildNet.us>; "Silvia Smith-Torres" <SSmith-Torres@ChildNet.us>

Tell you what -- if you would like to continue a dialogue on this issue come see me. But emails like the one you just sent are totally inappropriate and uncalled for. I won't grace it with a response.

Martin A. Berkowitz  
Chief Financial Officer

ChildNet  
"To protect Broward's abused, neglected and abandoned children"  
313 North State Road 7  
Plantation, FL 33317  
(954) 414-6000 Ext. 3862 Office  
(954) 414-6019 Fax

-----Original Message-----

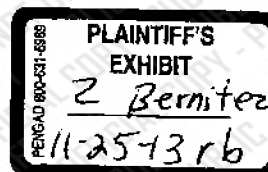
From: Leigh McPhail  
Sent: Friday, February 15, 2008 9:33 AM  
To: Marty Berkowitz  
Cc: Donna Skees; Fred Pinto; Karen Rubino; Barbara Moss; Emilio Benitez; Silvia Smith-Torres  
Subject: RE: Time and attendance

Why would you set up a committee if you have no intentions of hearing them out and making a group decision? Certainly you have control over your people to make the same decision you came up with, even if they may not have come up with the same one you did they are going to support you.

This is not a decision for the board and to make it one is inappropriate. I hope that you don't think you can convince me to agree with you when you state you "have consultants". We have made a significant investment into IVantage. Spectrum is on the cutting edge of this technology. I am not sure who your consultants are but just the fact that I have not met them tells me that you are not looking for a team solution or one that is best for this organization.

In reality, neither IVantage nor Great Plains are broke or incapable of accomplishing what needs to be done. Outsourcing payroll at this time has only been offered up as a solution because you don't want to ask your Finance Director to work with me in a manner that would

1



ChildNet 114

**ATTACHMENT 4**



resolve the existing problems. With that said the majority of the problems we had have already been resolved while Sandra Lanning was here.

Your solution to out source payroll is not a cost savings, not today and not in the future.

-----Original Message-----

From: Marty Berkowitz

Sent: Friday, February 15, 2008 4:26 AM

To: Leigh McPhail

Cc: Donna Skees; Fred Pinto; Karen Rubino; Barbara Moss; Emilio Benitez; Silvia Smith-Torres

Subject: RE: Time and attendance

Sorry to take so long to respond to you. I spent much of Thursday sedated an some of it in traction with a recurring sciatica problem. That's probably why I'm wide awake now. My initial note was sent only to you because I had a sense that we would strongly disagree on this and I wanted to have the opportunity to argue it out privately. But since you've opted to open things up, I'll respond to everyone.

First, you and i have two very different views of iVantage and its capabilities. I find the self-help aspects to be exceedingly clumsy and difficult to work with compared to other applications I've used and seen. While I have not spoken to any supervisors about it, I have had occasion to hear several directors complain about various aspects of the system and its functionality. Some may actually welcome being able to use something else. In addition, in the ADP demo we saw the time card application looked quite intuitive, easy to use, and frankly easier to get information from than what I personally have experienced with iVantage.

As I've continued to look at the subject of outsourcing in general and the issue of systems hosting in particular, I've consulted with a couple of well-placed and highly respected consultants on HRIS; iVantage made nobody's list of top 5 systems that they recommend to small and medium sized businesses. everyone considered it a second tier application at best.

That said, we already own and have made a substantial investment in it. So I have not opted to pursue a broader replacement strategy at this time. But I just don't believe it makes sense to expand our use of and reliance on the application. Nor do I think operationally it makes sense to tie ourselves to having to worry about links between ADP and another system for payroll purposes, with changes o one or the other then requiring reconsideration or reprogramming, as that will incur additional expense in the future.

As to costs today, it is a legitimate issue, but I believe we can negotiate a better deal on the ADP bundle than on either application individually, and I strongly believe a migration away from running our own systems is the absolute best answer for ChildNet. Therefore, subject to giving you one more shot to come back at me ion this, I'm planning to recommend to Emilio and then the Board that we move forward with the ADP bundle and aggressively pursue the April conversion date.

I should be on Friday morning, and my calendar is fairly clear until 11 AM. Feel free to stop in if you would like to discuss.

Marty

-----Original Message-----

From: Leigh McPhail



Sent: Thu 2/14/2008 12:59 PM

To: Marty Berkowitz

Cc: Donna Skees; Fred Pinto; Karen Rubino; Barbara Moss; Emilio Benitez; Silvia Smith-Torres

Subject: RE: Time and attendance

Hi

I appreciate your sense of urgency. I believe that if we can get the quirks out of IVantage that they will be the best c

---

**From:** Jia Lopez [Jrobinson@ChildNet.us] on behalf of Marty Berkowitz [mberkowitz@ChildNet.us]  
**Sent:** Wednesday, May 21, 2008 10:16 AM  
**To:** Barbara Moss; Marty Berkowitz; Larry Rein; Silvia Smith-Torres; Derrick Roberts  
**Subject:** (Archived) RE: Health Insurance

Final quote is due from Guardian around 10:00am this morning so we should be able to make a final decision soon thereafter.

-----Original Message-----

**From:** Barbara Moss  
**Sent:** Wednesday, May 21, 2008 9:22 AM  
**To:** Marty Berkowitz; Larry Rein; Silvia Smith-Torres; Derrick Roberts  
**Subject:** RE: Health Insurance

What's the final on the dental?

Barbara D. Moss  
Chief Operating Officer  
ChildNet  
"To Protect Broward's abused, neglected and abandoned children"

313 N State Road 7

Ft. Lauderdale, FL 33317

(954) 414-6019 Fax

(954) 263-3161 Cell

-----Original Message-----

**From:** Marty Berkowitz  
**Sent:** Tuesday, May 20, 2008 7:46 PM  
**To:** Barbara Moss; Larry Rein; Silvia Smith-Torres; Derrick Roberts  
**Subject:** RE: Health Insurance

I'm not sure if my earlier response got through to everyone. I believe Joey is over reacting just a bit and I will address this with him and the Finance Committee on Thurs. Bottom line, USI did not serve us well this year; while the end result looks fine, if Joey had not brought the competing broker on we would be paying a lot more for the same coverage. They (USI) did not run a very good competitive process. I would fire them right now. Lets get through open enrollment and get everything in place. But then if I were not a lame duck I would be competing the benefits brokerage contract very early in the new year with a bias towards change.

-----Original Message-----

**From:** Barbara Moss  
**Sent:** Tue 5/20/2008 2:01 PM  
**To:** Larry Rein; Silvia Smith-Torres; Derrick Roberts; Marty Berkowitz  
**Subject:** FW: Health Insurance

I meant to hit "reply all."

Barbara D. Moss  
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From: Barbara Moss  
Sent: Tuesday, May 20, 2008 12:30 PM  
To: Emilio Benitez  
Subject: RE: Health Insurance

You know, I'm concerned for what we can give our staff for benefits so it could be any broker as long as they reputable. That being said, in my opinion, I think USI (Anthony) deserves a call from you to express Joey's (board's) concerns.

Barbara D. Moss  
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From: Emilio Benitez  
Sent: Tuesday, May 20, 2008 11:43 AM  
To: Executives  
Subject: FW: Health Insurance

Any comments?

Emilio Benitez

Chief Executive Officer

ChildNet

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From: Britt Sikes [mailto:[BSikes@USIS.BIZ](mailto:BSikes@USIS.BIZ)]

Sent: Tuesday, May 20, 2008 8:38 AM

To: Epstein, Joey; Emilio Benitez; Howard Bakalar

Cc: Marty Berkowitz

Subject: RE: Health Insurance

If I understand correctly, then we can get the quality of service that we want/require through Edify at the same price of the lowest proposal. If this is true, this is a no brainer in my mind - we move forward with Edify. As an added benefit and as we look to diversify our funding sources, their team is active in the community and can likely be called upon for support.

Britt



---

From: Epstein, Joey [mailto:Joey.Epstein@rsmi.com]  
Sent: Tuesday, May 20, 2008 7:23 AM  
To: Emilio Benitez; hbakalar@familycentral.org; Britt Sikes  
Cc: Marty Berkowitz; Epstein, Joey  
Subject: Health Insurance  
Importance: High

Good morning guys. I just got off the phone with Marty regarding the group health insurance. As you may or may not be aware, our existing broker is USI. Our renewal is coming up soon and I have never felt good about USI (personal commentary). Upon many promises, they got our proposal to us late and not until Marty gave them a drop dead deadline. Upon receipt, I had Edify (another broker) work the case as they are good friends and I have great experiences with them and clients. As Marty will attest, they worked it very hard and came back with a proposal with quite a bit of savings.

Subsequent to this process, USI came back with a proposal with a 100,000 savings with United Healthcare, our preferred provider. Quite frankly, this pisses me off as they did not work the case properly on the front end and only came back to us when they were in jeopardy of losing us. Very unprofessional.

I am not a believer of retaining a current service provider when someone else does better, particularly under this type of circumstance. If a provider does a better job, they deserve the business. Therefore, I am proposing that we change agents NOW, as I feel it is the proper thing to do. The new agent can bring in the same United Healthcare package. USI does not deserve our business or the related commissions. They did a BAD job and don't deserve to be kept.

Let me know your thoughts as time is of the essence.

Thanks!

Joey

Joseph A. Epstein

Director

RSM McGladrey, Inc.

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<http://t0.wrapmail.com/t0/t1.asp?lid=587&mid=27436>

<p>14</p> <p>1 organization.</p> <p>2 Q. This was done at a board meeting?</p> <p>3 A. Yes.</p> <p>4 Q. And are minutes kept of all board meetings?</p> <p>5 A. Yes.</p> <p>6 Q. Was there any discussion during that board</p> <p>7 meeting -- did that board meeting occur sometime in</p> <p>8 2008?</p> <p>9 A. I don't remember.</p> <p>10 Q. Was there any discussion during the board meeting</p> <p>11 of your being on the committee?</p> <p>12 A. No, I don't remember that.</p> <p>13 Q. How many responses were there to the RFP?</p> <p>14 A. I believe there were about six, give or take.</p> <p>15 Q. Which company did you suggest would be the best</p> <p>16 company to become the new broker?</p> <p>17 A. At what point in time?</p> <p>18 Q. Well, how many companies did you suggest?</p> <p>19 A. One.</p> <p>20 Q. Which one?</p> <p>21 A. Edify.</p> <p>22 Q. E-d-i-f-y?</p> <p>23 A. Yes.</p> <p>24 Q. Inc. or?</p> <p>25 A. I don't remember if it's Inc. or LLP.</p>	<p>16</p> <p>1 Q. Who acquired them?</p> <p>2 A. Wells Fargo.</p> <p>3 Q. Did you suggest to Edify that they respond to the</p> <p>4 RFP?</p> <p>5 A. I don't recall specifically. We sent the RFP out</p> <p>6 to a number of brokers and it was posted.</p> <p>7 Q. Posted how?</p> <p>8 A. I believe on the web site.</p> <p>9 Q. These next questions aren't suggesting anything</p> <p>10 other than my ignorance of how ChildNet works and</p> <p>11 interfaces with the state. Are there any statutes or</p> <p>12 regulations, to your knowledge, that govern the way in</p> <p>13 which ChildNet needs to do business with such entities</p> <p>14 as its insurance broker?</p> <p>15 A. I don't know if it's statute or ChildNet policy.</p> <p>16 Q. Statute or ChildNet policy?</p> <p>17 A. Or ChildNet policy.</p> <p>18 Q. Okay. But in any case, there's either a statute,</p> <p>19 a state regulation or a ChildNet policy that governs the</p> <p>20 way you're supposed to do business, correct?</p> <p>21 A. Yes.</p> <p>22 Q. Is that written down to your knowledge?</p> <p>23 A. All the policies are in writing.</p> <p>24 Q. And is this on the web site?</p> <p>25 A. Oh, I don't know.</p>
<p>15</p> <p>1 Q. What is Edify?</p> <p>2 A. It's a large benefits broker and consulting firm.</p> <p>3 Q. Where's it located?</p> <p>4 A. Fort Lauderdale.</p> <p>5 Q. Who are the principals?</p> <p>6 A. Howard Gruverman, Carlos Castreneda.</p> <p>7 Q. G-r --</p> <p>8 A. -- u-v-e-r-m-a-n.</p> <p>9 Q. C-a-s-t --</p> <p>10 A. -- r-e-n-e-d-a would be close.</p> <p>11 Q. Where in Fort Lauderdale are they?</p> <p>12 A. Then or now?</p> <p>13 Q. Well, now.</p> <p>14 A. Now, they're in -- well, they don't exist</p> <p>15 anymore.</p> <p>16 Q. Okay. Where were they then?</p> <p>17 A. On Las Olas.</p> <p>18 Q. Have you ever had any business dealings with</p> <p>19 either Edify Mr. Gruverman or Mr. Castreneda?</p> <p>20 A. Edify was a client of mine.</p> <p>21 Q. For how long?</p> <p>22 A. Two or three years.</p> <p>23 Q. When?</p> <p>24 A. I don't remember the years and it's been a couple</p> <p>25 of years since they were acquired.</p>	<p>17</p> <p>1 Q. What, if anything, does the policy say about</p> <p>2 conflict of interest?</p> <p>3 A. I don't believe the policy says anything about</p> <p>4 the conflict of interest. There's a separate conflict</p> <p>5 of interest policy.</p> <p>6 Q. What does the conflict of interest policy say</p> <p>7 about a board member's involvement with a vendor who is</p> <p>8 also a client of that board member?</p> <p>9 A. Just that it would be disclosed.</p> <p>10 Q. And how would it be disclosed?</p> <p>11 A. And that may not be disclosed in the policy. It</p> <p>12 may be silent as related to a vendor/client. I don't</p> <p>13 know exactly. I don't recall.</p> <p>14 Q. Did you disclose your relationship with Edify in</p> <p>15 connection with its response to the RFP?</p> <p>16 A. Prior to the RFP, yes.</p> <p>17 Q. When did you disclose it and to whom?</p> <p>18 A. Sometime prior to the RFP. I don't recall</p> <p>19 specifically who.</p> <p>20 Q. You mean to whom?</p> <p>21 A. Correct, and the reason I say that is because I</p> <p>22 don't recall if I told the CFO at the time, or I told</p> <p>23 the chair of the board at the time.</p> <p>24 Q. The CFO being Marty Berkowitz, correct?</p> <p>25 A. Yes.</p>

**ATTACHMENT 6**  
BRICKELL, GOMBERG & ASSOCIATES, INC.

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<p>18</p> <p>1 Q. And the chair being Mr. Ambrose?</p> <p>2 A. Yes.</p> <p>3 Q. To whomever you disclosed this, it was verbal as</p> <p>4 opposed to in writing?</p> <p>5 A. Yes.</p> <p>6 Q. Was this prior to the RFP being issued?</p> <p>7 A. Yes.</p> <p>8 Q. Was it prior to Mr. Ambrose's suggestion that an</p> <p>9 RFP be issued?</p> <p>10 A. Yes.</p> <p>11 Q. What was the context of your disclosure?</p> <p>12 A. I'm not sure I understand that.</p> <p>13 Q. Well, for example, if I represent another</p> <p>14 accounting firm and McGladrey wished to hire me, I might</p> <p>15 say: I represent A &amp; B accountants because there would</p> <p>16 be a context and a reason for me to tell McGladrey that.</p> <p>17 I'm not sure I would just walk up to you on the street</p> <p>18 and say: Hi, I represent A &amp; B accountants.</p> <p>19 A. Most other people do -- no. I'm kidding. I had</p> <p>20 asked the CFO to meet with Edify prior to there ever</p> <p>21 being an RFP, and at that time I mentioned that they</p> <p>22 were a client.</p> <p>23 Q. And did Mr. Berkowitz meet with Edify?</p> <p>24 A. I don't remember.</p> <p>25 Q. Did you ask Mr. Ambrose to meet with Edify?</p>	<p>20</p> <p>1 you would of some other partner's primary client?</p> <p>2 A. No.</p> <p>3 Q. Just everything goes into a pot?</p> <p>4 A. Yes.</p> <p>5 Q. And the originating CPA doesn't get any premium?</p> <p>6 A. Correct.</p> <p>7 Q. Do you recall roughly what the billings were to</p> <p>8 Edify on an annual basis?</p> <p>9 A. Ten, twelve thousand.</p> <p>10 Q. Are you also the CPA for Mr. Gruverman and</p> <p>11 Mr. Castreneda?</p> <p>12 A. No, neither one.</p> <p>13 Q. Did you disclose to -- well, you said that you</p> <p>14 disclosed to either the CFO or the chair?</p> <p>15 A. Or maybe both, I mean, again.</p> <p>16 Q. Okay. Did you disclose to anyone else on the</p> <p>17 internal committee your firm's relationship with Edify?</p> <p>18 A. I don't recall. I would think so.</p> <p>19 Q. You would think so?</p> <p>20 A. I would think so, but I don't recall.</p> <p>21 Q. Did you make any written disclosure of you and</p> <p>22 your firm's relationship to Edify?</p> <p>23 A. No.</p> <p>24 Q. How were the six or so -- was it six or somewhere</p> <p>25 around six?</p>
<p>19</p> <p>1 A. No.</p> <p>2 Q. Did you ask anyone other than Mr. Berkowitz to</p> <p>3 meet with Edify?</p> <p>4 A. No.</p> <p>5 Q. Did Mr. Berkowitz request that the board issue an</p> <p>6 RFP or authorize an RFP?</p> <p>7 A. Yes.</p> <p>8 Q. With whom from Edify did Mr. Berkowitz meet?</p> <p>9 A. Well, I don't remember if he met and I wouldn't</p> <p>10 remember who from there went over and met with him.</p> <p>11 Q. Do you know whether or not prior to a formal</p> <p>12 response to the RFP there was any presentation made to</p> <p>13 ChildNet about how Edify could provide a better deal?</p> <p>14 A. I don't remember that.</p> <p>15 Q. How is McGladrey compensated by -- how was</p> <p>16 McGladrey compensated by Edify?</p> <p>17 A. An hourly rate based on the work performed.</p> <p>18 Q. Strictly?</p> <p>19 A. Strictly.</p> <p>20 Q. Do you receive, and once again, this is not</p> <p>21 suggesting anything. This is just my ignorance because</p> <p>22 different firms work in different ways. You were the</p> <p>23 originating partner on Edify, correct?</p> <p>24 A. Correct.</p> <p>25 Q. So do you get a larger chunk of its business than</p>	<p>21</p> <p>1 A. Six.</p> <p>2 Q. Six or so?</p> <p>3 A. Yeah, exactly.</p> <p>4 Q. How were the six or so proposals evaluated?</p> <p>5 A. Each individual committee member went through</p> <p>6 them and I think ranked them because we did get to a</p> <p>7 short list.</p> <p>8 Q. Were there spreadsheets prepared comparing them?</p> <p>9 A. After presentations. I don't recall if before.</p> <p>10 Q. Spreadsheets were prepared after the</p> <p>11 presentations?</p> <p>12 A. Yes.</p> <p>13 Q. Was Ms. McPhail part of the committee?</p> <p>14 A. I don't recall, but I don't think so.</p> <p>15 MR. LOFFREDO: I'm sorry. You said I don't</p> <p>16 think so?</p> <p>17 THE WITNESS: I don't think so.</p> <p>18 Q. Were there any other side-by-side comparisons</p> <p>19 except the spreadsheets that were prepared following the</p> <p>20 presentations?</p> <p>21 A. You mean separate from the presentations and the</p> <p>22 actual proposals?</p> <p>23 Q. All right. So we have the six or so proposals.</p> <p>24 Was it a written or a PowerPoint presentation?</p> <p>25 A. No. Proposals were written prior to any</p>



<p>22</p> <p>1 presentations.</p> <p>2 Q. And how was the presentation done?</p> <p>3 A. The short listed firms did it however they</p> <p>4 wanted.</p> <p>5 Q. How many firms were on the short list?</p> <p>6 A. Three or four.</p> <p>7 Q. Who called out the short list?</p> <p>8 A. Oh, I don't recall. Again, each committee member</p> <p>9 received a full set of all the proposals.</p> <p>10 Q. Did the committee vote on who on the short list</p> <p>11 should be the winner?</p> <p>12 A. I don't recall if it was a vote or just a</p> <p>13 comparison of everybody's individual spreadsheets and a</p> <p>14 point system. I don't remember the exact process.</p> <p>15 Q. So each of the committee members did their own</p> <p>16 spreadsheets?</p> <p>17 A. Yes.</p> <p>18 Q. There is no staff member assigned to do one</p> <p>19 overall spreadsheet comparing them?</p> <p>20 A. I don't remember if that was done or not.</p> <p>21 Q. So after the vote or the comparison of the</p> <p>22 spreadsheets, what happened next?</p> <p>23 A. We ranked them and proposed -- recommended one to</p> <p>24 the board.</p> <p>25 Q. And whom did you recommend?</p>	<p>24</p> <p>1 Plaintiff's Exhibit No. 10. You're not an addressee</p> <p>2 here, but have you ever seen Plaintiff's Exhibit 10</p> <p>3 before?</p> <p>4 A. No.</p> <p>5 (Plaintiff's Exhibit No. 10 was marked for</p> <p>6 identification.)</p> <p>7 Q. Is United USI? It refers to in the second full</p> <p>8 paragraph. United took another look at the numbers once</p> <p>9 they understood they were in a competitive situation.</p> <p>10 Is that USI?</p> <p>11 A. Is that question for me?</p> <p>12 Q. Yes.</p> <p>13 A. Oh, I'm sorry.</p> <p>14 Q. I'm assuming it is because in the next sentence</p> <p>15 where it says Marty's e-mail and then it begins: The</p> <p>16 attached schedule is an attempt to compare the latest</p> <p>17 and greatest offerings from USI-United and USI-Coventry.</p> <p>18 A. I guess United was the insurance carrier that USI</p> <p>19 was the broker for, and Coventry would have been the</p> <p>20 insurance carrier that Edify was recommending I guess.</p> <p>21 Q. On the May 15 e-mail where it quotes, quote,</p> <p>22 "Marty's e-mail," the last sentence of that paragraph</p> <p>23 states: To summarize United's 100 percent copay</p> <p>24 scenario saves us 236,000 (345,000) over this year.</p> <p>25 Their 80 percent copay alternative would save us 345K</p>
<p>23</p> <p>1 A. Seitlin.</p> <p>2 Q. Seitlin?</p> <p>3 A. S-e-i-t-l-i-n.</p> <p>4 Q. Did Seitlin get the contract or did you stay with</p> <p>5 USI?</p> <p>6 A. No. It was changed to Seitlin.</p> <p>7 Q. What year did Seitlin win?</p> <p>8 A. Oh, I don't remember.</p> <p>9 Q. Well, how about 2008? Who won in 2008?</p> <p>10 A. I don't remember exactly what year we went</p> <p>11 through that process, so whatever the minutes say I'm</p> <p>12 sure is what it was.</p> <p>13 Q. How many RFP's have there been since 2008?</p> <p>14 MR. LOFFREDO: Specifically for insurance</p> <p>15 brokers?</p> <p>16 MR. AMLONG: Yes.</p> <p>17 A. Two.</p> <p>18 Q. And who won the first one?</p> <p>19 A. Well, let me be clear. There were two. One was</p> <p>20 for health insurance and benefits. One was for property</p> <p>21 and casualty. So they were not for the same purpose.</p> <p>22 but they were both insurance related.</p> <p>23 Q. Which one did Seitlin win?</p> <p>24 A. Both.</p> <p>25 Q. I'm showing you what's being marked as</p>	<p>25</p> <p>1 (455K) and Coventry's proposal is in the middle at 292K.</p> <p>2 They are no longer competitive. Would you agree with</p> <p>3 that assessment?</p> <p>4 MR. LOFFREDO: Object to form, foundation.</p> <p>5 A. Again, I can't agree or disagree based on a memo</p> <p>6 without knowing what was behind that.</p> <p>7 Q. Were you aware that Ms. McPhail was recommending</p> <p>8 United?</p> <p>9 A. No.</p> <p>10 Q. Did you ever become aware that Ms. McPhail had</p> <p>11 recommended United?</p> <p>12 A. Not that I recall.</p> <p>13 MR. AMLONG: I'm showing you what's</p> <p>14 previously been marked as Exhibits 6, 7, 9 and 8, which</p> <p>15 aren't in numerical order but in date order.</p> <p>16 MR. LOFFREDO: What, Bill, was it 6, 7?</p> <p>17 MR. AMLONG: 9 and 8. Even though you were</p> <p>18 not -- you don't appear to be an addressee or a</p> <p>19 sender --</p> <p>20 MR. LOFFREDO: Are we on No. 6?</p> <p>21 MR. AMLONG: Yes. Oh, you are back here.</p> <p>22 Q. The e-mail string begins, it would appear, with a</p> <p>23 May 20, 7:23 a.m. from you to Mr. Benitez, Mr. Bakalar,</p> <p>24 Mr. Sikes, Mr. Berkowitz. This it would appear from</p> <p>25 your 7:23 a.m. May 20, 2008 e-mail that there was no</p>

<p>26</p> <p>1 RFP, but that you simply solicited a proposal from Edify 2 in response to a proposal from USI, is that correct? 3 A. I suggested that Marty meet with Edify. The fact 4 that they ultimately issued some type of proposal I 5 guess was the culmination of that discussion. 6 Q. Well, during 2008 concerning health and dental 7 insurance, was there an RFP that was issued by ChildNet? 8 A. Yes. 9 Q. When was it issued? 10 A. I don't know exactly the dates 11 Q. Well, was the request for a proposal issued 12 before or after July 1, 2008? 13 A. I don't know the answer. I don't know where that 14 day comes from. I suggested Edify before there was ever 15 an RFP if that's what you wanted to know. 16 Q. Yes. 17 A. Yes. 18 Q. Who is Britt Sikes? 19 A. A former board member. 20 Q. Why were Mr. Bakalar and I'm assuming it's a 21 Ms. Sikes? 22 A. No. It's mister. 23 Q. Oh, okay. Why were Misters Bakalar and Sikes. 24 two board members, in the loop on your e-mails about 25 getting Edify to replace USI?</p>	<p>28</p> <p>1 Q. Other than the proposed selection of Edify over 2 USI, when I say proposed selection, I'm referencing your 3 May 20 e-mail, the third paragraph where you state: 4 Therefore I am proposing that we change agents NOW, all 5 caps. Do you feel that that was the proper thing to do? 6 A. (No response.) 7 MR. LOFFREDO: Second page, four or five. 8 Q. Have you ever made any similar suggestion 9 concerning any other vendor? 10 A. No. 11 Q. Was this the first communication that you had 12 during 2008 with anyone at ChildNet concerning whether 13 it should switch from USI to Edify? 14 A. Oh, I don't remember that. It was coming up for 15 renewal. USI was doing a bad job. I recommended a 16 different agent. 17 Q. How was USI doing a bad job? 18 A. I believe that e-mail explains it on comparable 19 policies they came up with a premium amount that would 20 save ChildNet a hundred thousand dollars. 21 Q. Well, that's because you said this is too high. 22 We're going to go with somebody else and they said we'll 23 cut a hundred K, right? 24 A. No, I don't recall that. 25 Q. Well, in your second paragraph you say:</p>
<p>27</p> <p>1 A. I don't remember why I included them. 2 Q. Were they on the finance committee? 3 A. I don't remember. 4 Q. At 7:46 -- I'm sorry -- at 7:46 p.m. 5 Mr. Berkowitz -- 6 MR. LOFFREDO: Which exhibit are we on? 7 MR. AMLONG: We're still on 6. It's page 8 one, Bates stamp ChildNet 117. 9 Q. Mr. Berkowitz is e-mailing Ms. Moss, Mr. Rein, 10 Ms. Smith-Torres and Mr. Roberts saying that, among 11 other things, I believe Joey is overreacting just a bit 12 and will address this at the finance committee on 13 Thursday. 14 Do you have any idea what Mr. Berkowitz was 15 talking about when he was saying I believe Joey is 16 overreacting just a bit? 17 A. No. 18 Q. The top e-mail on this from Ms. Lopez on behalf 19 of Mr. Berkowitz is once again not addressed to you, but 20 refers to Guardian. Do you know who Guardian is? 21 A. Another insurance company. 22 Q. Is there a bylaw or a policy of ChildNet that 23 deals with whether board members should get involved in 24 day-to-day operations of the organization? 25 A. I don't know if there's a bylaw or policy.</p>	<p>29</p> <p>1 Subsequent to this process, USI came back with a 2 proposal with a hundred thousand dollars savings with 3 United Healthcare, our preferred provider. 4 A. Okay. 5 Q. Quite frankly, this pisses me off because they 6 did not work the case properly on the front end and only 7 came back to us when they were in jeopardy of losing us. 8 Very unprofessional. You said they did a bad job. Did 9 they do a bad job of servicing the policy? 10 A. I don't know the answer to that. Don't you think 11 it's a bad job when they come back with the same policy 12 with a hundred thousand dollars shortfall just because 13 they know there's competition? 14 Q. We can skip 7 because that's essentially the same 15 thing. Were you ever made aware of the May 16 e-mails 16 from Ms. McPhail to Mr. Berkowitz? 17 A. No. 18 Q. In Plaintiff's Exhibit 6, the top of that is an 19 e-mail that refers to United Healthcare versus Vista 20 Healthcare comparison. Do you know what Vista 21 Healthcare was? 22 A. Another insurance company. 23 Q. Did you have any involvement in the discussion of 24 outsourcing of payroll? 25 A. I don't recall.</p>

**From:** Jia Lopez [Jrobinson@ChildNet.us] on behalf of Marty Berkowitz [mberkowitz@ChildNet.us]  
**Sent:** Wednesday, May 21, 2008 10:16 AM  
**To:** Barbara Moss; Marty Berkowitz; Larry Rein; Silvia Smith-Torres; Derrick Roberts  
**Subject:** (Archived) RE: Health Insurance

Final quote is due from Guardian around 10:00am this morning so we should be able to make a final decision soon thereafter.

-----Original Message-----

**From:** Barbara Moss  
**Sent:** Wednesday, May 21, 2008 9:22 AM  
**To:** Marty Berkowitz; Larry Rein; Silvia Smith-Torres; Derrick Roberts  
**Subject:** RE: Health Insurance

What's the final on the dental?

Barbara D. Moss  
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ChildNet  
"To Protect Broward's abused, neglected and abandoned children"

313 N State Road 7

Ft. Lauderdale, FL 33317

(954) 414-6019 Fax

(954) 263-3161 Cell

-----Original Message-----

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**Sent:** Tuesday, May 20, 2008 7:46 PM  
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I'm not sure if my earlier response got through to everyone. I believe Joey is over reacting just a bit and I will address this with him and the Finance Committee on Thurs. Bottom line, USI did not serve us well this year; while the end result looks fine, if Joey had not brought the competing broker on we would be paying a lot more for the same coverage. They (USI) did not run a very good competitive process. I would fire them right now. Lets get through open enrollment and get everything in place. But then if I were not a lame duck I would be competing the benefits brokerage contract very early in the new year with a bias towards change.

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**From:** Barbara Moss  
**Sent:** Tue 5/20/2008 2:01 PM  
**To:** Larry Rein; Silvia Smith-Torres; Derrick Roberts; Marty Berkowitz  
**Subject:** FW: Health Insurance



I meant to hit "reply all."

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From: Emilio Benitez  
Sent: Tuesday, May 20, 2008 11:43 AM  
To: Executives  
Subject: FW: Health Insurance



Any comments?

Emilio Benitez

Chief Executive Officer

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From: Britt Sikes [mailto:[BSikes@USIS.BIZ](mailto:BSikes@USIS.BIZ)]

Sent: Tuesday, May 20, 2008 8:38 AM

To: Epstein, Joey; Emilio Benitez; Howard Bakalar

Cc: Marty Berkowitz

Subject: RE: Health Insurance

If I understand correctly, then we can get the quality of service that we want/require through Edify at the same price of the lowest proposal. If this is true, this is a no brainer in my mind - we move forward with Edify. As an added benefit and as we look to diversify our funding sources, their team is active in the community and can likely be called upon for support.

Britt

10/5/2011

ChildNet 119

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Subsequent to this process, USI came back with a proposal with a 100,000 savings with United Healthcare, our preferred provider. Quite frankly, this pisses me off as they did not work the case properly on the front end and only came back to us when they were in jeopardy of losing us. Very unprofessional.

I am not a believer of retaining a current service provider when someone else does better, particularly under this type of circumstance. If a provider does a better job, they deserve the business. Therefore, I am proposing that we change agents NOW, as I feel it is the proper thing to do. The new agent can bring in the same United Healthcare package. USI does not deserve our business or the related commissions. They did a BAD job and don't deserve to be kept.

Let me know your thoughts as time is of the essence.

Thanks!

Joey

Joseph A. Epstein

Director

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10/5/2011

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10/5/2011

ChildNet 119

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R. LEIGH MCPHAIL  
V  
CHILDNET, INC.

DEPOSITION OF MARTIN A. BERKOWITZ

March 14, 2013

CONDENSED TRANSCRIPT AND CONCORDANCE

PREPARED BY:  
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**ATTACHMENT 8**

<p style="text-align: right;">10</p> <p>1 didn't think USI was working hard enough to get the  2 rates down and to benefit ChildNet.  3 And so after several iterations and discussions  4 with the people at USI, I looked for a second broker,  5 not necessarily to take the business away from USI, but  6 in order to put some pressure on USI so that they would  7 work a little bit harder and actually produce the kinds  8 of results for the company that the company needed. The  9 second broker brought a proposal to us from a different  10 carrier.  11 Q. Who was the second broker?  12 A. The second broker was Edify.  13 Q. And who's the carrier?  14 A. The carrier that they were representing was  15 Coventry, which previously was known as vista. I think  16 I have that backwards, but they were both names here.  17 Q. And how did you get in contact with Edify?  18 A. I actually went to Joey Epstein, who has a lot of  19 contacts in the community. I asked him if he knew  20 somebody who might be willing to pick this up very  21 quickly and get some results for me.  22 He told me that his firm had a client Edify that  23 was very, very good, and that he could make contact with  24 them and ask them to do us a favor on this one and move  25 quickly on it, and he put me in touch with them, and I</p>	<p style="text-align: right;">12</p> <p>1 Q. Did Mr. Epstein make any written disclosure to  2 you of his involvement with Edify?  3 A. Not that I can recall, no.  4 Q. I believe the chairman then was Samuel Ambrose?  5 A. The chairman of the board?  6 Q. Yes.  7 A. No. Howard – what's Howard's last name? I'm  8 sorry  9 Q. Bakalar?  10 A. Yes.  11 Q. Do you know if Mr. Epstein made any disclosure to  12 Mr. Bakalar?  13 A. I don't know.  14 Q. I thought Mr. Epstein had identified Mr. Ambrose  15 as the chairman at the time. Do you know if he made any  16 disclosure to Mr. Ambrose?  17 A. I don't know a Mr. Ambrose. I'm not sure if he  18 joined the board after I left.  19 MR. LOFFREDO: Object to form and foundation  20 and characterization of the prior testimony of  21 Mr. Epstein from last week.  22 (Discussion held off the record.)  23 Q. Did you propose that the business be given to  24 Edify?  25 A. I did not.</p>
<p style="text-align: right;">11</p> <p>1 began discussing the situation with them.  2 Q. Why did you go to Mr. Epstein?  3 A. I needed a recommendation quickly. Joey has a  4 lot of contacts in the business community around Fort  5 Lauderdale both because of his firm and other activity  6 that he's engaged in around town, and I just thought  7 he'd be able to get somebody for me.  8 Q. What was your understanding of any conflict of  9 interest policy that ChildNet had?  10 A. Concerning this?  11 Q. Yes.  12 A. I didn't see anything in any of our policies that  13 would seem to prohibit that. We were not paying Edify  14 anything. If we placed the coverage through them,  15 they'd be paid by the carrier and not by ChildNet. So  16 they were making no money directly from ChildNet, and  17 the fact is that they were willing to work for free in  18 putting the proposals together, which is what they did.  19 Q. Well, aren't most pitches for free?  20 A. Yeah, but then in this kind of a situation where  21 there's an incumbent carrier and you're running very,  22 very close to the deadline for placing the coverage, a  23 lot of people wouldn't have picked this thing up because  24 the likelihood of making a change at that point was  25 probably very small.</p>	<p style="text-align: right;">13</p> <p>1 Q. Did you propose that the business stay with USI?  2 A. I did an analysis that laid out pros and cons of  3 both carriers, and in that analysis, as I recall, I left  4 that decision to people who were going to be there. I  5 was not. I had already resigned. I was leaving  6 ChildNet fairly soon after this decision was being made.  7 I didn't feel it was fair for me to make the  8 decision when I wasn't going to be there to deal with  9 employees during open enrollment and afterwards.  10 So there was an analysis that was done for the  11 senior management team. There was some discussion back  12 and forth about which carrier we should go with. There  13 were some memos that went back and forth as I recall,  14 but the ultimate decision was made by the people who  15 were going to be at ChildNet when this plan was put in  16 place.  17 Q. Did your analysis favor Edify?  18 A. My analysis would have favored Coventry, the  19 other carrier, not necessarily Edify. That would have  20 been the company that Edify would have been compensated  21 by, but if I was doing this purely on a financial basis,  22 which was of paramount importance to ChildNet at that  23 time, the Coventry proposal was better financially for  24 the company.  25 Q. Did the Coventry proposal provide the same level</p>

<p>46</p> <p>1 the kind of mutual respect that would allow them to work 2 together. 3 I don't know what the cause of the problem was, 4 what started it. I could never get to the bottom of it, 5 but it was obvious to everybody at ChildNet that there 6 was not a whole lot of mutual respect between the two of 7 them. 8 Q. Let me show you what's being marked as 9 Plaintiff's Exhibit 16. Do you recall what the time 10 sheets module was from iVantage? 11 A. I think that this was the connection between 12 iVantage and Great Plains for purposes of payroll. 13 (Plaintiff's Exhibit No. 16 was marked for 14 identification.) 15 Q. But you're not sure? 16 A. I just don't recall specifically then. 17 Q. When did you go from 26 to 24 pay periods? 18 A. I don't remember. I don't know if that -- 19 Q. Was that on your watch? 20 A. Somehow I think it may have been implemented just 21 right after I came in, but it had been planned and put 22 together by somebody else. 23 Q. Do you know if the time sheet module discussed in 24 Exhibit 16 was ever implemented? 25 A. I don't recall.</p>	<p>48</p> <p>1 A. I don't remember. 2 (Plaintiff's Exhibit No. 18 was marked for 3 identification.) 4 Q. Let me show you Plaintiff's Exhibit 19. This 5 talks about a time card program. Is that the same thing 6 as time sheets? 7 A. Let me just work my way through it first okay. 8 please. 9 Q. Sure. 10 A. Yeah, the way I'm reading this, I think it's the 11 same thing as what time sheets were. 12 (Plaintiff's Exhibit No. 19 was marked for 13 identification.) 14 Q. Are you familiar with what iVantage offered from 15 an HR standpoint? 16 A. Not fully from an HR standpoint. I knew what it 17 offered from the perspective of how it interfaced with 18 my particular areas of responsibility and my needs for 19 data. 20 Q. Well, what data need did you have other than for 21 the payroll information? 22 A. I have the responsibility -- had the 23 responsibility of creating a budget for the 24 organization, for example. So it was necessary for me 25 to have records on current payroll and then projected so</p>
<p>47</p> <p>1 Q. Did Mr. Moy support the outsourcing of all the HR 2 recordkeeping? 3 A. I don't recall what Mr. Moy's position on that 4 was. 5 Q. Did Ms. Moss support the outsourcing of the HR 6 recordkeeping? 7 A. I don't remember what her position was on it. 8 Q. Did Mr. Benitez support the outsourcing? 9 A. Yes, he would have had to because he made the 10 decision ultimately to do this. 11 Q. Let me show you what's being marked as 12 Exhibit 17. Did you ever provide Ms. McPhail with the 13 detailed financial information on the RFPs for 14 outsourcing the payroll that you requested February 4? 15 A. Yes, I must have. 16 (Plaintiff's Exhibit No. 17 was marked for 17 identification.) 18 Q. Well, you're saying you must have. Do you have 19 any -- 20 A. If you're asking me if I have a direct 21 recollection of actually giving it to her, no, but I 22 believe that I did, yes. 23 Q. Let me show you what's being marked as 24 Exhibit 18, and ask you what reorganization is being 25 discussed?</p>	<p>49</p> <p>1 I could create projected payrolls and create budgets 2 that could be approved by the board for organizational 3 operation. 4 This, as I mentioned before, was a time where it 5 was really important for us to be saving as much money 6 as possible, and so I would do a lot of projections, 7 almost monthly. And the information coming in by 8 iVantage with regard to current staffing levels, current 9 pay levels was important for me to be able to do that 10 Q. Well, weren't you able to get that by having ADP 11 talk to iVantage and then having it talk to Great 12 Plains? 13 A. That might have been possible, yes. 14 Q. So what other information did you need from 15 iVantage from your CFO standpoint? 16 A. That was the primary information I needed. The 17 ultimate decision with regard to outsourcing all HR 18 recordkeeping was a financial decision. 19 Q. So we're back to the Porsche and the Pinto 20 analogy? 21 A. I don't necessarily -- 22 MR. LOFFREDO: Object, that's not a 23 question. 24 Q. Regardless of price, regardless of functionality, 25 you thought that the ADP system would be cheaper?</p>



<p>14</p> <p>1 of coverage?</p> <p>2 A. No.</p> <p>3 Q. Less?</p> <p>4 A. The coverage was not as rich as the coverage that</p> <p>5 United had proposed, that's correct. That's why the</p> <p>6 price was less.</p> <p>7 Q. Did your analysis compare identical coverages?</p> <p>8 A. No. Identical coverages didn't make any sense</p> <p>9 because we had to deal with the proposals that were on</p> <p>10 the table in front of us. So I compared the actual</p> <p>11 proposals, the final one that came in from United</p> <p>12 through USI, and the final one that came in from</p> <p>13 Coventry through Edify.</p> <p>14 Q. Did Ms. McPhail do a companion analysis?</p> <p>15 A. As I recall, she did an analysis that played off</p> <p>16 of something I had done and commented on an analysis</p> <p>17 that I had done, and offered her opinion as to which way</p> <p>18 we should go and why we should go that way.</p> <p>19 Q. And which way did she recommend?</p> <p>20 A. She was recommending, as I recall, that we go</p> <p>21 with United, the United proposal through USI.</p> <p>22 Q. Who made the decision?</p> <p>23 A. The decision, as I remember, was ultimately made</p> <p>24 by Emilio Benitez. He received input from a number of</p> <p>25 people. He had my input; he had Ms. McPhail's input. I</p>	<p>16</p> <p>1 MR. LOFFREDO: Other than the fact that we</p> <p>2 talked generally about his time at ChildNet. Other than</p> <p>3 that, yes, I would.</p> <p>4 MR. AMLONG: And you'll agree that it's not</p> <p>5 necessary for me to --</p> <p>6 MR. LOFFREDO: No.</p> <p>7 MR. AMLONG: -- ask question by question?</p> <p>8 MR. LOFFREDO: No. Correct, I agree.</p> <p>9 BY MR. AMLONG:</p> <p>10 Q. Did you review any documents?</p> <p>11 THE WITNESS: I can respond to that?</p> <p>12 MR. LOFFREDO: Yes.</p> <p>13 A. Yes.</p> <p>14 Q. Which documents did you review?</p> <p>15 A. There were a series of e-mails, some related to</p> <p>16 the insurance renewal from that particular year. Others</p> <p>17 related to the outsourcing of the payroll function.</p> <p>18 Q. To your knowledge, did Mr. Epstein disclose his</p> <p>19 involvement with Edify to Mr. Benitez?</p> <p>20 A. I don't know.</p> <p>21 Q. To Ms. Moss?</p> <p>22 A. I don't know.</p> <p>23 Q. To anybody else in the management team that was</p> <p>24 making the decision?</p> <p>25 A. I don't know.</p>
<p>15</p> <p>1 believe he talked to Barbara Moss and Silvia</p> <p>2 Smith-Torres about it as well, and the ultimate call was</p> <p>3 his.</p> <p>4 Q. Was there a meeting?</p> <p>5 A. From what I can recall, there were probably</p> <p>6 several meetings.</p> <p>7 Q. Was there a vote?</p> <p>8 A. You know, I don't remember a vote.</p> <p>9 Q. What, if anything, did you do to prepare for</p> <p>10 today's deposition?</p> <p>11 A. I met with Mr. Loffredo earlier this week.</p> <p>12 Q. What did you discuss?</p> <p>13 MR. LOFFREDO: You're welcome generally to</p> <p>14 say what we discussed. Otherwise, I instruct you not to</p> <p>15 answer on attorney/client privilege.</p> <p>16 MR. AMLONG: Well, I don't believe that he's</p> <p>17 your --</p> <p>18 MR. LOFFREDO: Let me finish. Mr. Berkowitz</p> <p>19 is a former executive level employee of the company.</p> <p>20 The issues we discussed occurred when he was working</p> <p>21 there. Therefore, they are privileged, and I instruct</p> <p>22 him not to answer.</p> <p>23 MR. AMLONG: Okay. And any question I ask</p> <p>24 him about what he discussed with you, you'd instruct him</p> <p>25 in the same way?</p>	<p>17</p> <p>1 Q. Did Mr. Benitez discuss with you any intention to</p> <p>2 terminate Ms. McPhail?</p> <p>3 A. No.</p> <p>4 Q. Did you ever recommend that?</p> <p>5 A. No.</p> <p>6 Q. Let me show you what's being marked or what has</p> <p>7 been marked as Plaintiff's Exhibit No. 1 to this</p> <p>8 deposition, and ask you if you've ever seen that</p> <p>9 document before?</p> <p>10 A. I believe that when I first came on board at</p> <p>11 ChildNet, I was allowed to read this. I couldn't take a</p> <p>12 copy of it, but someone did show me the report to read,</p> <p>13 so I had a sense of what happened before and why I was</p> <p>14 being brought in.</p> <p>15 Q. Who explained to you what happened before and why</p> <p>16 you were being brought in?</p> <p>17 A. I believe I had conversations with Larry Rein and</p> <p>18 probably with Howard Bakalar at the same time.</p> <p>19 Q. And why did they tell you that you were being</p> <p>20 brought in?</p> <p>21 A. Well, my predecessor had been let go, along with</p> <p>22 the former CEO of the company. As a result of this</p> <p>23 particular investigation, they needed a new CFO. They</p> <p>24 wanted someone who had the kind of experience I had, and</p> <p>25 so they offered me the job.</p>



**From:** Leigh McPhail  
**Sent:** Thursday, May 15, 2008 6:52 PM  
**To:** Emilio Benítez; Barbara Moss; Derrick Roberts; Larry Rein; Silvia Smith-Torres; Marty Berkowitz  
**Cc:** Crista Banas  
**Subject:** FW:

**Importance:** High

**Attachments:** ChildNet Matrix USI Recommendationsrev 5 15 08 including coventry.xls

Hi

In order to keep this less complicated I am going to use Marty's email to provide you with updated plan information so that Senior Staff can evaluate the plans to determine the best solution for CN and its employees.

United took another look at the numbers once they understood they were in a competitive situation. They have updated all the rates and also lowered the Rx copays to \$10/\$35/\$50. I have attached the revised saving sheet. Please see Edits in Blue. The savings numbers are significant for United.

Marty's Email:

The attached schedules attempt to compare the latest and greatest offerings from USI-United and Edify-Coventry. It certainly is not as neat and clean as I would like, but it should serve the purpose of allowing for a comparison and making a decision. The first worksheet, entitled Benefits, has four sets of columns. The first two columns represent the original USI-United proposal, the second set is the proposal we reviewed yesterday, and the third set is the latest United offering. The first United proposal is not cost competitive with the others and I don't believe we should be considering it. The major differences between the yesterday's United proposal and today's are in the HMO, where 100% coinsurance (what the insurance company pays) has been replaced by 80% for virtually all services. This reduces HMO rates significantly, and would save us \$109,000. The last set of columns presents the latest offering from Edify-Coventry. Terms and conditions are virtually identical to what we saw previously, but they have shaved a point off their pricing, reducing premiums by about \$20,000 from their previous offering. Relative pricing is shown on the second worksheet, labeled Cost. To summarize, United's 100% co-pay scenario saves us \$236K (\$345k) over this year, their 80% co-pay HMO alternative would save us \$345K (\$455k), and Coventry's proposal is in the middle at \$292K. (They are no longer competitive)

My take on the plan differences and my recommendation follow. I will offer my thoughts but I do not think I should have a vote in the final determination, as I will not be around next year to have to listen to employee complaints about the decision to be made. The major differences in coverage along with my opinion on who has the better option, follows:

**Deductibles** – United has a \$500 single/\$1000 family annual deductible on both their alternative plan designs. Coventry has a \$500 annual deductible that applies only to in-hospital services; there is no deductible for any other services. Winner – Coventry

The deductible applies to all services provided in a hospital setting (inpatient/outpatient surgery/MRI's/etc) in both the United and Coventry plans. On the United plan the deductible also applies to emergency room visits.

**Coinsurance** – For most United plans, they pay 100% after satisfaction of deductible and any service specific co-pay. The one exception is today's HMO offering where they have dropped this to 80% in exchange for a big break on price. Coventry has an 80% coinsurance rate for most services. This could mean big dollars for an employee with a lengthy hospital stay. Winner – United

**Prescription Drugs** – United's co-pays are generally \$20/\$40/\$60; Coventry's are \$10/\$35/\$50. Winner – Coventry

All USI plans are now \$10/\$35/\$50, both plans are the same.

**Out of Pocket Maximum (OPM)** – United is \$3,000 per member; a member is every participant in the plan, so a family of 4 is four members, and each person has an individual OPM of \$3,000. Coventry is \$2,000 employee/\$4,000 family in the low HMO, and \$1,500/\$3,000 in the high HMO and PPO. So in every instance Coventry's

# ATTACHMENT 9

proposal offers better catastrophic coverage. Winner – Coventry

In the 100% plan United has a \$1,000 family deductible. The only way to reach the OPM after that would be through copays. For example, they would have to have 120 visits to the doctor (\$25 copay) or 60 visits to the urgent care center (\$50 copay). Winner – United with a 100% plan over Coventry's 80% plan.

There are some other small differences, but nothing that I believe is a tipping point. On plan design, I give Coventry the advantage. The zero deductible (as pointed out above the deductible applies to services provided at a hospital (in and out patient for both United and Coventry) and lower copays for doctor visits and prescriptions (Rx is the same) will save most employees money. As to hospitalizations, while the coinsurance issue is significant, the differences in OPM are as well. So, for example, a \$10,000 hospital stay under the United plan for a single employee will cost the employee \$500 (the deductible) assuming no other medical costs for the year for all their plans except the new cheaper HMO; under that plan, it would cost \$2,400. (The 100% plan the Maximum it would cost employees \$500.00) Under the Coventry High HMO and PPO plans, that same \$10,000 stay would cost \$1,500, the OPM (this cost is understated it would be \$2,000, the \$500 deductible doesn't apply to the OPM). Under the Coventry Low HMO, it would cost the employee \$2,000 (this cost is understated it would be \$2,500 as the \$500 deductible doesn't apply to the OPM). United has the clear advantage except for the new HMO. (The 100% plan is the most competitive and therefore, all plans have an advantage over Coventry) But in virtually every instance I can think of where multiple family members have serious illnesses, the Coventry OPM structure offers the employee much better catastrophic coverage. (With the 100% plan the OPM no longer comes into play for the catastrophic coverage, everything now would be paid 100%. The only thing now would be the \$500 deductible individual and \$1000 deductible family) So the choice comes down to whether the first dollar protection or the catastrophic coverage is more important to our employees. If it is the former, then United is a better choice; if it's the latter, then Coventry is better. (Now we can say the in either case United is the better choice.) The other factor is concerns about Coventry based on past experience with Vista. If you are concerned about this but like the Coventry plan better, than I would recommend that we ask Edify to get Coventry reps in here to discuss what if anything they are doing differently today. (Now that the 100% plan is competitive, we don't need to discuss Coventry's poor reputation in the market place because United reputation is superior.)

**I recommend we go with United's 100% Plan. But would prefer to go with the original plan they offered. With that said, Emilio originally asked USI to further decrease the cost of the plan by 7%. USI has negotiated the price down to more than double his request. They were able to negotiate a 100% plan at 15.2% and to compare it with Coventry's 80% plan, a reduction of only 12.92%, United's 80% plan is a reduction of 20.1%.**

Hope this helps you make the best decision for ChildNet. Thank you.

R. Leigh McPhail  
Director of Human Resources

***ChildNet***

*Protecting Broward's abused, neglected & abandoned children.*

313 N. State Road 7  
Plantation, FL 33317  
(954) 461-9431(cell)  
(954) 414-6000 Ext. 3870  
(954) 414-6016 (fax)

**Silvia Smith-Torres**

---

**From:** Emilio Benítez  
**Sent:** Saturday, February 16, 2008 6:34 PM  
**To:** Leigh McPhail  
**Cc:** Executives  
**Subject:** (Archived) FW:

Leigh: Now that I have had more time to review the email exchanges, I must say that I believe the tone of your email response to Marty was out of line. That said, my response to you yesterday afternoon suggesting you discuss your concerns with Barbara so she can raise them at our staff meeting on Tuesday is the most appropriate way to handle the matter. Although I want to encourage discussion and disagreement, and if need be a lively disagreement, there is never a need to be disrespectful. Emilio

---

**From:** Emilio Benítez  
**Sent:** Fri 2/15/2008 4:50 PM  
**To:** Leigh McPhail  
**Subject:** RE:

I had to go to a meeting in Miramar so I'm not in the office. But if in ref to the emails, I think you need to discuss the matter and your concerns with Barbara so she can raise them at our staff meeting on Tuesday. If you still feel it is necessary to address the matter with me too, will be happy to do so. Thanks. Emilio

-----Original Message-----

**From:** "Leigh McPhail" <[L.McPhail@ChildNet.us](mailto:L.McPhail@ChildNet.us)>  
**To:** "Emilio Benítez" <[ebenitez@ChildNet.us](mailto:ebenitez@ChildNet.us)>  
**Sent:** 2/15/08 3:48 PM  
**Subject:**

Emilio

I have a termination to conduct at 4 pm at West and then I am on two weeks vacations. Please call or email me if you want me to return after I am finished at west. Thanks

R. Leigh McPhail  
Director of Human Resources  
ChildNet  
Protecting Broward's abused, neglected & abandoned children.  
313 N. State Road 7  
Plantation, FL 33317  
(954) 461-9431 (cell)  
(954) 414-6000 Ext. 3870  
(954) 414-6016 (fax)



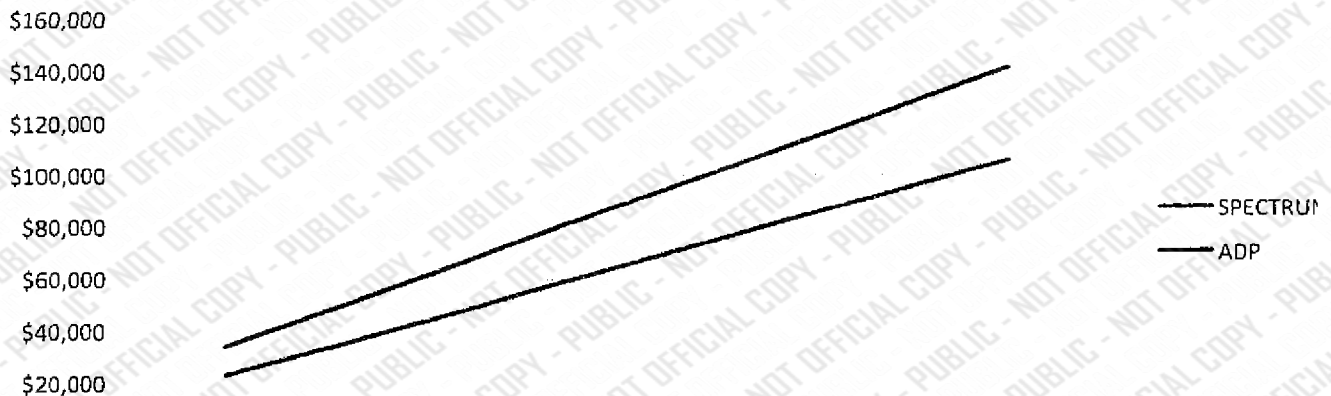
11/22

## Five Year Total Cost of Ownership Comparison: SPECTRUM vs. ADP

	<u>Year 1</u>	<u>Year 2</u>	<u>Year 3</u>	<u>Year 4</u>
<b>SPECTRUM COSTS</b>				
Annual Fees:				
iVantage Annual Maintenance	\$9,437	\$9,437	\$9,437	\$9,437
OrgPublisher Annual Maintenance	\$597	\$597	\$597	\$597
Monthly SPECTRUM hosting services \$875 per month, 3 year agreement	\$10,500	\$10,500	\$10,500	\$10,500
One time charges:				
ADP interface (16 hours X \$185/hr)	\$2,960			
Total SPECTRUM Annual Costs:	\$23,494	\$20,534	\$20,534	\$20,534
Cummulative SPECTRUM Annual Costs:	\$23,494	\$44,028	\$64,562	\$85,096

## ADP COSTS

Annual Fees:				
ADP HR Benefits				
\$2,960 per month, First 3 months free	\$26,640	\$26,640	\$26,640	\$26,640
One time charges:				
HR Benefits Solution	\$6,400			
HR Benefits Carrier Connect	\$1,600			
Total ADP Annual Costs:	\$34,640	\$26,640	\$26,640	\$26,640
Cummulative ADP Annual Costs:	\$34,640	\$61,280	\$87,920	\$114,560



# ATTACHMENT 10



Year 5

\$9,437  
\$597  
\$10,500

\$20,534  
\$105,630

\$26,640

\$26,640  
\$141,200

SPECTRUM  
ADP

#### Key SPECTRUM benefits:

Significantly lower five year TCO - 25% savings if SPECTRUM hosts iVantage; 55% if ChildNet continues to hosts  
World class, proven Human Resources customer support  
Healthy, existing four year business relationship  
Complex position management tailored to ChildNet specifications Includes Position and Budget History  
Greater HR functional scalability as ChildNet needs grow  
Benefits interface currently in production  
ChildNet already owns iVantage license - recognize full ROI with iVantage investment  
Flexibility - Continue hosting iVantage on ChildNet server or have SPECTRUM host  
Incident and Accident Reporting  
Notes to file  
Succession Planning  
Existing Essential Function Internal Advertisement for open positions  
Employee Recognition

#### STATE REQUIRED INFORMATION BY FLORIDA STATUTE

Organization Chart  
Performance management configured to ChildNet requirements with notifications and routings  
Training Module with certifications, classes, qualifications information on all CA's, USA's, CAA's  
Job Descriptions  
Background Screening Information - FBI, FDLE, County, Local, Out of State and notification  
Drivers License Information with notifications  
Vehicle Insurance with notifications  
Reference Check Information  
HIPAA Certification Information with notification  
Security Agreement Information and notification  
Drug Test Data and results  
Corrective Actions

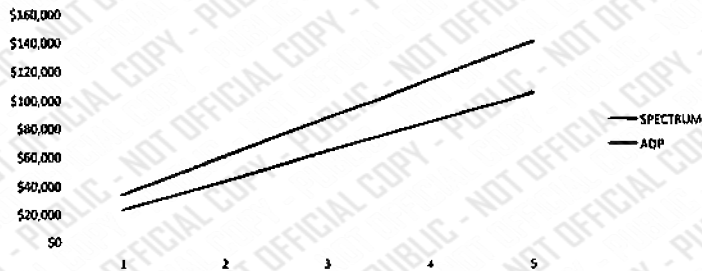
\*\*\*Bulleted words will be lost with ADP System

### Five Year Total Cost of Ownership Comparison: SPECTRUM vs. ADP

	Year 1	Year 2	Year 3	Year 4	Year 5
<b>SPECTRUM COSTS</b>					
<b>Annual Fees:</b>					
iVantage Annual Maintenance	\$9,437	\$9,437	\$9,437	\$9,437	\$9,437
OrgPublisher Annual Maintenance	\$597	\$597	\$597	\$597	\$597
Monthly SPECTRUM hosting services	\$10,500	\$10,500	\$10,500	\$10,500	\$10,500
\$875 per month, 3 year agreement					
<b>One time charges:</b>					
ADP Interface (16 hours X \$185/hr)	\$2,960				
<b>Total SPECTRUM Annual Costs:</b>	<b>\$23,494</b>	<b>\$20,534</b>	<b>\$20,534</b>	<b>\$20,534</b>	<b>\$20,534</b>
<b>Cumulative SPECTRUM Annual Costs:</b>	<b>\$23,494</b>	<b>\$44,028</b>	<b>\$64,562</b>	<b>\$85,096</b>	<b>\$105,630</b>

### ADP COSTS

<b>Annual Fees:</b>					
<b>ADP HR Benefits</b>					
\$2,960 per month, First 3 months free	\$26,640	\$26,640	\$26,640	\$26,640	\$26,640
<b>One time charges:</b>					
HR Benefits Solution	\$6,400				
HR Benefits Corner Connect	\$1,600				
<b>Total ADP Annual Costs:</b>	<b>\$34,640</b>	<b>\$26,640</b>	<b>\$26,640</b>	<b>\$26,640</b>	<b>\$26,640</b>
<b>Cumulative ADP Annual Costs:</b>	<b>\$34,640</b>	<b>\$61,280</b>	<b>\$87,920</b>	<b>\$114,560</b>	<b>\$141,200</b>



Invoice or C21 #	Job	U/Date	Rep Name	Date of Serv	Description	Invoice Unit Code	Unit Price	Extended Price
	INV00				Initial Software Installation			
	INV0012662 Total				First Year Maintenance			
	INV0012150 Total				Implementation Vail & Follow-Up/Trvl Exp			
	INV0012151 Total				Implementation Services			
	INV0012338 Total				Second Software Installation			
	INV0012337 Total				Third Software Installation			
	INV0012167 Total				Implementation Services			
	INV0012368 Total				Implementation Services			
	INV0012445 Total				OrgPublisher Module			
	INV0012446 Total				First Year Maintenance -OrgPublisher			
	INV0012494 Total				On-Site Training/Travel Exp			
	INV0012537 Total				Implementation Services			
	INV0012518 Total				Implementation Services			
	INV0012703 Total				Implementation Services			
	INV0012706 Total				Implementation Services			
	INV0012167 Total				Implementation Services			
	INV0014084 Total				Annual Maintenance Renewal			
	INV0014365 Total				OrgPublisher Maintenance Renewal			
	INV0014863 Total				Upgrade Services			
	INV0016301 Total				Crystal Power Users			
	INV0016543 Total				Annual Maintenance Renewal			
	INV0016554 Total				OrgPublisher Maintenance Renewal			
	INV0018040 Total				Timesheet & Scheduling Planning Modules			
	INV0018051 Total				First Year Maintenance on Module Licenses			
	INV0019061 Total				Upgrade Services			
	INV0019361 Total				Upgrade Services			
	INV0019612 Total				Timesheet Configuration Services			
	INV0019764 Total				Annual Maintenance Renewal			
	INV0019770 Total				OrgPublisher Maintenance Renewal			
	INV0019910 Total				Timesheet Configuration Services			
	INV0020150 Total				Timesheet Configuration Services			
	INV0020435 Total				Timesheet Configuration Services			
	INV0021846 Total				Timesheet Configuration Services			
	INV0021678 Total				Annual Maintenance Renewal			
	INV0021694 Total				OrgPublisher Maintenance Renewal			
	Grand Total							

Software	Maintenance	Services	Training	U/Rate	Total
12,800.00	-	-	-	-	12,800.00
-	6,023.00	-	-	-	6,023.00
-	-	3,500.00	-	660.73	4,160.73
-	-	2,450.00	-	-	2,450.00
12,800.00	-	-	-	-	12,800.00
12,800.00	-	-	-	-	12,800.00
-	-	5,600.00	-	-	5,600.00
-	-	7,800.00	-	-	7,800.00
3,150.00	-	-	-	-	3,150.00
-	535.50	-	-	-	535.50
-	-	-	4,429.14	934.94	5,364.08
-	-	3,250.00	-	-	3,250.00
-	-	700.00	-	-	700.00
-	-	1,800.00	-	-	1,800.00
-	-	1,750.00	-	-	1,750.00
-	-	700.00	-	-	700.00
-	7,076.00	-	-	-	7,076.00
-	468.03	-	-	-	468.03
-	-	1,400.00	-	-	1,400.00
1,500.00	-	-	-	-	1,500.00
-	7,076.00	-	-	-	7,076.00
-	501.64	-	-	-	501.64
3,340.00	-	-	-	-	3,340.00
-	459.00	-	-	-	459.00
-	-	7,100.00	-	-	7,100.00
-	-	1,050.00	-	-	1,050.00
-	-	3,250.00	-	-	3,250.00
-	7,688.00	-	-	-	7,688.00
-	561.64	-	-	-	561.64
-	-	303.50	-	-	303.50
-	-	437.50	-	-	437.50
-	-	175.00	-	-	175.00
-	-	350.00	-	-	350.00
-	9,437.00	-	-	-	9,437.00
-	595.00	-	-	-	595.00
46,200.00	41,359.51	40,775.00	1,279.14	1,915.67	134,729.32



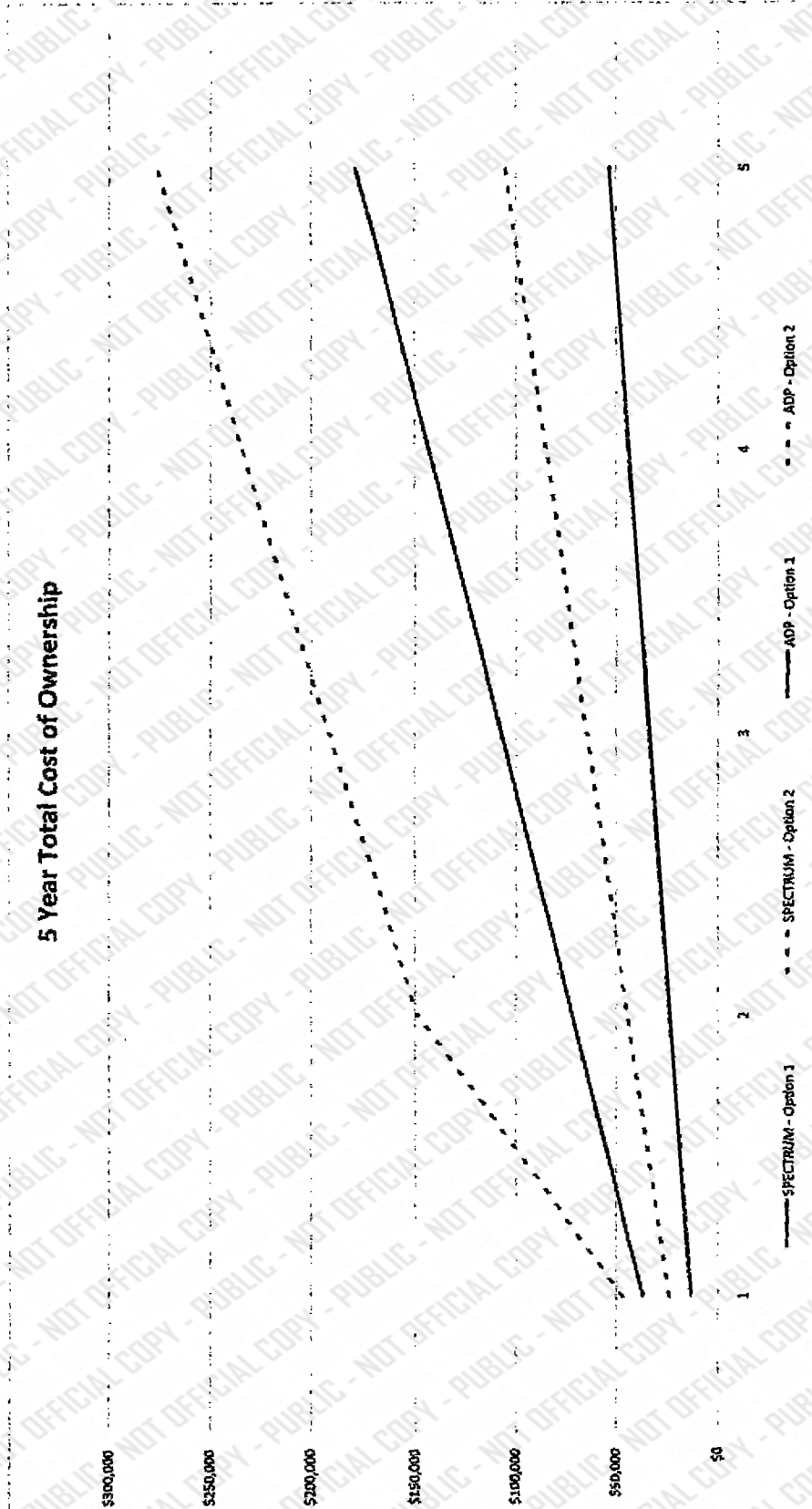
**Five Year Total Cost of Ownership Comparison: SPECTRUM vs. ADP**

<b>SPECTRUM COSTS</b>	<b>Year 1</b>	<b>Year 2</b>	<b>Year 3</b>	<b>Year 4</b>	<b>Year 5</b>
<b>OPTION 1: ChildNet hosts iVantage</b>					
Annual Fees:					
iVantage Annual Maintenance	\$9,437	\$9,437	\$9,437	\$9,437	\$9,437
Org/Publisher Annual Maintenance	\$597	\$597	\$597	\$597	\$597
One time charges:					
ADP Interface (16 hours X \$185/hr)	\$2,960				
<b>Total SPECTRUM Annual Costs:</b>	<b>\$12,994</b>	<b>\$10,034</b>	<b>\$10,034</b>	<b>\$10,034</b>	<b>\$10,034</b>
<b>Cumulative SPECTRUM Annual Costs:</b>	<b>\$12,994</b>	<b>\$23,028</b>	<b>\$33,062</b>	<b>\$43,096</b>	<b>\$53,130</b>
<b>*OPTION 2: SPECTRUM hosts iVantage</b>					
Annual Fees:					
iVantage Annual Maintenance	\$9,437	\$9,437	\$9,437	\$9,437	\$9,437
Org/Publisher Annual Maintenance	\$597	\$597	\$597	\$597	\$597
Monthly SPECTRUM hosting services \$875 per month, 3 year agreement	\$10,500	\$10,500	\$10,500	\$10,500	\$10,500
One time charges:					
ADP Interface (16 hours X \$185/hr)	\$2,960				
<b>Total SPECTRUM Annual Costs:</b>	<b>\$23,494</b>	<b>\$20,534</b>	<b>\$20,534</b>	<b>\$20,534</b>	<b>\$20,534</b>
<b>Cumulative SPECTRUM Annual Costs:</b>	<b>\$23,494</b>	<b>\$44,028</b>	<b>\$64,562</b>	<b>\$85,096</b>	<b>\$105,630</b>

\*This configuration is not currently in effect, however to avoid using CN server this would be the cost.

ADP COSTS		Year 1	Year 2	Year 3	Year 4	Year 5
<b>OPTION 1: Implement ADP HR</b>						
Annual Fees:						
ADP HR Benefits						
\$2,960 per month, First 3 months free		\$26,640	\$35,520	\$35,520	\$35,520	\$35,520
One time charges:						
HR Benefits Solution		\$6,400				
HR Benefits Carrier Connect		\$3,200				
Total ADP Annual Costs:		\$36,240	\$35,520	\$35,520	\$35,520	\$35,520
Cumulative ADP Annual Costs:		\$36,240	\$71,760	\$107,280	\$142,800	\$178,320
<b>OPTION 2: Implement ADP HR and fill lost functionality</b>						
Annual Fees:						
ADP HR Benefits						
\$2,960 per month, First 3 months free		\$26,640	\$35,520	\$35,520	\$35,520	\$35,520
One time charges:						
HR Benefits Solution		\$6,400				
HR Benefits Carrier Connect		\$3,200				
Costs to replace lost functionality:						
Core Talent Management			\$50,000			
(Performance Management, Alerts, Training Succession Planning, Recognition)						
Reporting - Multiple databases connection		\$5,000	\$5,000	\$5,000	\$5,000	\$5,000
Position Management		\$5,000	\$2,000	\$2,000	\$2,000	\$2,000
Total ADP Annual Costs:		\$46,240	\$102,520	\$42,520	\$42,520	\$42,520
Cumulative ADP Annual Costs:		\$46,240	\$148,760	\$191,280	\$233,800	\$276,320

# 5 Year Total Cost of Ownership



#### Key SPECTRUM benefits:

Significantly lower 5 year Total Cost of Ownership (TCO) - 62% savings if SPECTRUM hosts IVantage; 81% if ChildNet continues to hosts World class, proven Human Resources customer support  
Healthy, existing four year business relationship  
Complex position management tailored to ChildNet specifications Includes position, job, location, and position budget history  
Greater HR functional scalability as ChildNet needs grow and change  
Benefits Interface currently in production with no additional cost requirements  
ChildNet already owns IVantage license - recognize full ROI with IVantage Investment  
Flexibility - Continue hosting IVantage on ChildNet server or have SPECTRUM host  
Supervisors ability to add notes about employees to the file  
Succession Planning to determine who is ready to be placed in higher level positions  
Existing Essential Function Internal Advertisement for open positions  
Employee Recognition  
Organization Chart required by DCF to see organization at a glance

#### STATE REQUIRED INFORMATION BY FLORIDA STATUTE

Performance appraisals configured to ChildNet requirements with automatic notification to supervisor and routing  
Training Module with certifications, classes, qualifications information on all CA's, USA's, CAA's  
Job Descriptions to include the essential functions of the job (interconnected to performance reviews)  
Background Screening Information - FBI, FDLE, County, Local, Out of State and notification  
Drivers License Information with automatic notification to supervisor and employee  
Vehicle Insurance with automatic notification to supervisor and employee  
Reference Check Information  
Annual HIPAA Certification Information with automatic notification to supervisor and employee  
Annual Security Agreement Information with automatic notification to supervisor and employee  
Drug Test Data and results  
Corrective Actions  
Immigration status with automatic notification to employee and supervisor (Federal Requirement)  
Incident and Accident Reporting required by OSHA (Federal Requirement) includes federal forms  
EEOC Compliance (Federal Requirement) includes federal forms - allows for the ability to quickly respond to EEOC complaints too



**Five Year Total Cost of Ownership Comparison: SPECTRUM vs. ADP**

<b>SPECTRUM COSTS</b>		<b>Year 1</b>	<b>Year 2</b>	<b>Year 3</b>	<b>Year 4</b>	<b>Year 5</b>
<b>OPTION 1: ChildNet hosts IVantage</b>						
Annual Fees:						
IVantage Annual Maintenance		\$9,437	\$9,437	\$9,437	\$9,437	\$9,437
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One time charges:						
ADP Interface (16 hours X \$185/hr)		\$2,960				
<b>Total SPECTRUM Annual Costs:</b>		<b>\$12,994</b>	<b>\$10,034</b>	<b>\$10,034</b>	<b>\$10,034</b>	<b>\$10,034</b>
<b>Cummulative SPECTRUM Annual Costs:</b>		<b>\$12,994</b>	<b>\$23,028</b>	<b>\$33,062</b>	<b>\$43,096</b>	<b>\$53,130</b>
<b>*OPTION 2: SPECTRUM hosts IVantage</b>						
Annual Fees:						
IVantage Annual Maintenance		\$9,437	\$9,437	\$9,437	\$9,437	\$9,437
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Monthly SPECTRUM hosting services		\$10,500	\$10,500	\$10,500	\$10,500	\$10,500
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<b>OPTION 1: Implement ADP HR</b>						
Annual Fees:						
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\$2,950 per month, First 3 months free		\$26,640	\$35,520	\$35,520	\$35,520	\$35,520
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<b>OPTION 2: Implement ADP HR and RIJ lost functionality</b>						
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ADP HR Benefits						
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Succession Planning, Recognition)						
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# 5 Year Total Cost of Ownership



#### Key SPECTRUM benefits:

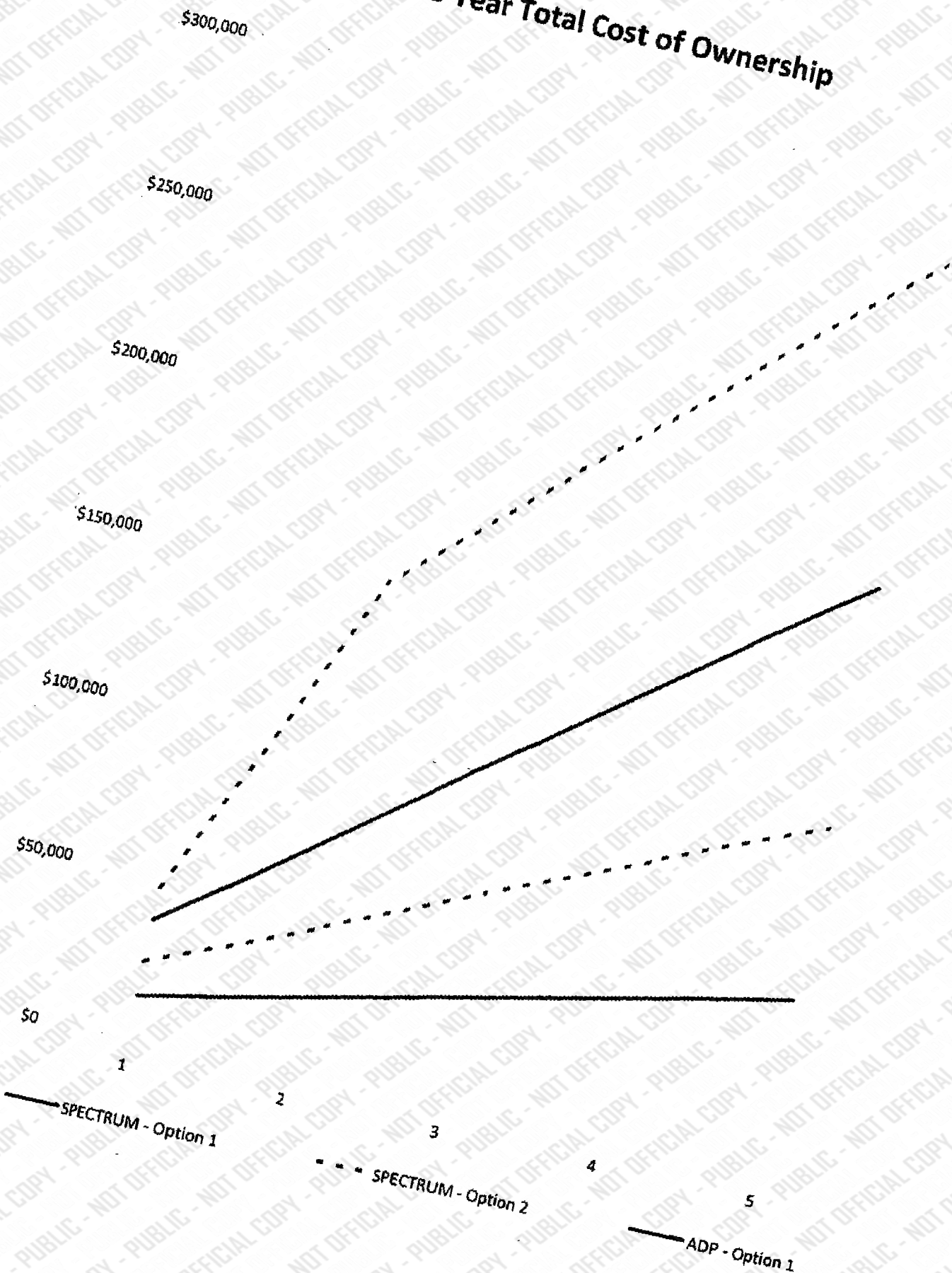
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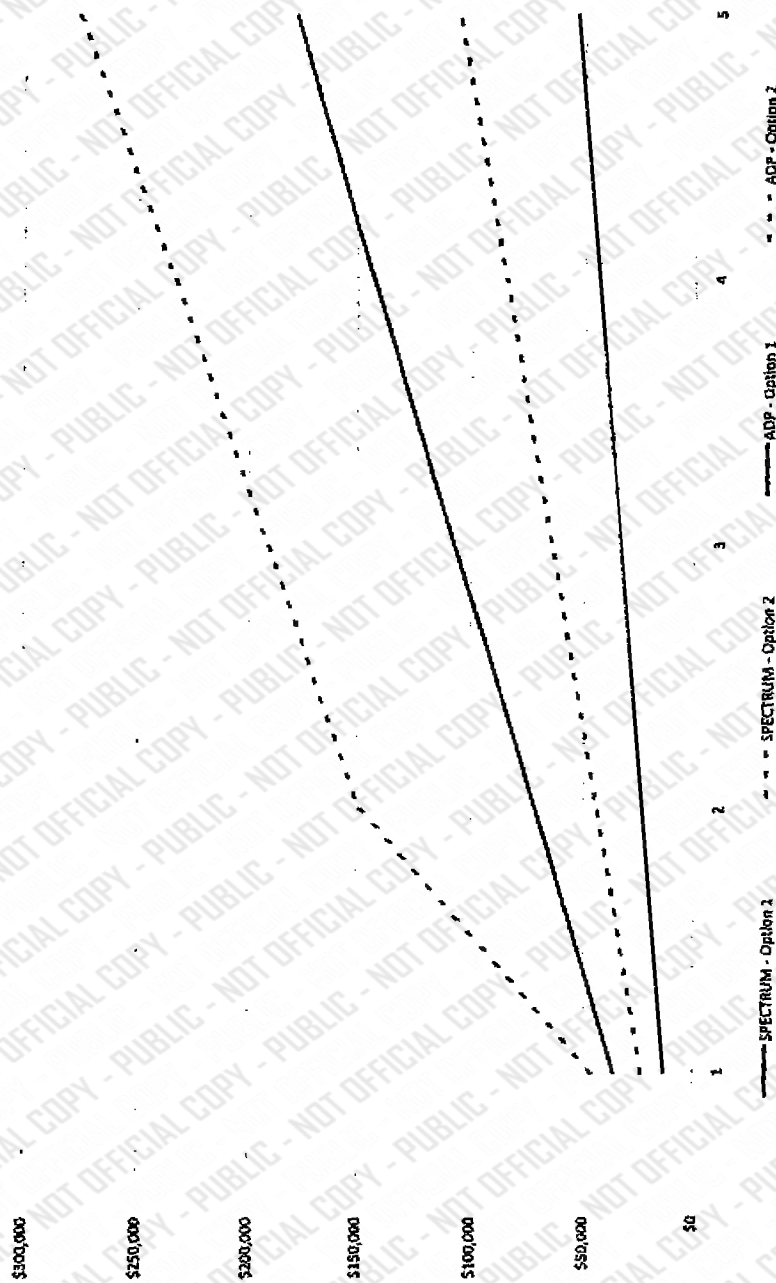
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5 Year Total Cost of Ownership





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**Declaration of Leigh McPhail, Under Penalty Of Perjury  
Pursuant to §§ 92.52 and 92.525, FLA. STAT.**

Leigh McPhail deposes and says:

1. My name is Leigh McPhail. I am the Plaintiff in this matter.
2. I was late one day to an ADP training session in June 2008 — but only because I was tending to other necessary duties at ChildNet. I telephoned the ADP project managers to state that I would be detained.
3. My only discussion with anyone else in the class, other than simply asking for instructions on how to operate the system, was to agree in a conversational tone of voice with a woman sitting next to me who volunteered to me about how she did not like the ADP system.
4. I did not comment negatively to any ADP personnel (about, for example, the ADP system not being user-friendly, as stated in the June 12 e-mail from Brian Langton), criticize the ADP product to anyone else in the class (e.g., telling others during a break that the Ivantage system was so much better and less expensive than ADP, as accused by Allison Carvalho, June 10) or solicit agreement with my opinions about ADP's shortcomings.
5. As to the allegation that I was seeking to be able to enter new hires into "Pay eXpert" because it would be easier, I have no idea what "Pay

## **ATTACHMENT 11**



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eXpert" is and, therefore, could not have had that conversation.

6. At the time of the ADP training, I was aware of hostility by Martin Berkowitz, the chief financial officer, as a result of my having opposed his proposal to switch insurance brokers (to a client of one of the board members) and to abandon the fully paid-for Ivantage Human Resource Information System for a more expensive, but less functional ADP product, as well as the hostility that Emilio Benitez, the new president and chief executive officer, had expressed to me in or about January 2008 when he asked me for the details of the investigation in which I was involved that led to the termination of the prior CEO and CFO. I would have known that any of the kind of behavior as described in the e-mails would have been seized on as a reason to terminate me. Therefore, I approached the ADP training not recalcitrantly, but on my "best behavior."

7. I engaged in no behavior that could reasonably be viewed as disruptive at any time during any ADP training session. Within a day or two after the training session, Barbara Moss, the ChildNet chief operating officer and my direct supervisor, asked how the training had gone: I responded that it had been "good."

8. I never saw the e-mails from ADP personnel until in the midst of this litigation. I never was given specifics of how I was supposed to have been "disruptive" in my relationship to the ADP project manager, to which

Mr. Benitez referred cryptically in my termination letter.

9. Under penalty of perjury, I declare that I the foregoing  
Declaration is true.

---

LEIGH MCPHAIL

Executed January 27, 2014 at Fort Lauderdale, FL.